Devanna Bhatta

THE

SMRUTI CHANDRIKA

ON THE

HINDU LAW OF INHERITANCE.

A WORK OF ESPECIAL AUTHORITY
OF THE MADRAS SCHOOL,

BY

DEVANNA BHUT.

TRANSLATED FROM THE ORIGINAL

BY

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PREFACE TO THE SECOND EDITION.

THE publication of a second edition of this work, so shortly after the first, may appear strange, but the rapid sale of the first edition and the pressing demand for further copies, have rendered such a publication indispensable. It is the pleasing duty of the author to proclaim his gratitude to the Government and the Public for the encouragement he has been favoured with, without which, and without the consequent conviction in his mind that his work possesses some degree of usefulness, he would not have ventured to lay a second edition of it before the Public; and he has been enabled, in passing the work through the Press, to make some few alterations and additions wherever they were found to be necessary.

T. KRISTNASAWMY.

CUDDALORE, *July* 1867.

PREFACE TO THE FIRST EDITION.

NO BRANCH of the Hindu Law has attained so much importance as the law of succession or inheritance. It is a law by which the rights of the majority of the people of Southern India are governed, and which is of most frequent use and extensive application.

Till 1863, it had been the practice to apply to the Pundits or Law Officers for opinions on doubtful points of law, and their opinions, though implicitly followed, were frequently found not to be free from faults and defects. A striking instance of this is exhibited in the Judgment of the High Court in the famous case of the Collector of Madura *versus* M. Ramalinga Sathupathy, in which the Honourable Judges, after adverting to the Pundit's opinion in that case, observe: "The Pundit's opinion in this case may be at once set "aside; he has absolutely interpolated the words 'ven-"erable protectors' into a passage of Vasishtha, which "is the basis of all the commentaries upon which we "have to remark. We believe this to be a very fair "example of the manner in which the Pundits have, "for a long series of years, been accustomed to give "their opinions, and the fact that the custom of the "late Sudder Court was to follow those opinions,

"without any scrutiny of the materials upon which "they were or professed to be based, renders us unable "to attach to their decisions and dicta the weight to "which the decisions of a Court of Justice, founded "upon its own deliberate examination of real authori- "ties, would be entitled."

Since the abolition of the office of Pundits, a close research into the text-books of Hindu Law has become absolutely necessary for the right administration of justice; and for this purpose the want of correct and exact translations of several of the useful Hindu Law books, applicable to the various parts of India, has been greatly felt.

In the Madras School, the Mitákshara is the most celebrated authority. This treatise has fortunately been translated by H. T. Colebrooke, Esq., and the translation has proved an immense benefit to the Public and has been regarded as of standard excellence.

Next to the Mitákshara, in point of authority, stands the Smrúti Chandrika, an exposition of the Smrútis or laws, by Devanna Bhut. The Honourable T. L. Strange, the late Judge of the High Court of Madras, in his Manual of Hindu Law, speaks as follows of the Smrúti Chandrika:—"This is an especial "authority of the Madras School, in which it has ori- "ginated, and stands next in estimation to the Miták- "shara. It differs, however, in doctrine from the Miták- "shara in some few points." Sir Thomas Strange, in his well-known production, entitled "The Elements of Hindu Law," referring to the Smrúti Chandrika, makes the following observation: "Of the Author

"of the Smrúti Chandrika, named Devanna Bhut,
"little, if anything, seems to be known. The work
"attributed to him was compiled during the existence
"of the Vidayanagara Dominion (an extensive south-
"ern empire that flourished during the thirteenth,
"fourteenth, and fifteenth centuries of our era;) but
"apparently not under the direct sanction of the
"Government. It has been considered by Mr. Cole-
"brooke to be a work of uncommon excellence, if not
"superior, in extent of research and copiousness of
"disquisition, to the Madhavya; though he would not
"venture to say, upon his own opinion, which would
"prevail where they might be found to differ."

Mr. Colebroke, in his preface to the treatises of Jimuta Vahana and Mitákshara, says, "The works of "other eminent writers have, concurrently with the "Mitákshara, considerable weight in the Schools of "Law, which have respectively adopted them; as the "Smrúti Chandrika in the south of India; the Chin-"tamani, Ratnakara and Vivadachandra at Benares, "and the Mayukha among the Mahrattas."

I have, in the following pages, translated so much of the above work as relate to the law of succession or inheritance. The difficulty of the task was greater than I had anticipated at the time of undertaking the translation.

Notwithstanding my utmost endeavours, I was unable to get a printed copy of the Smrúti Chandrika in Sanskrit. I was hence obliged to furnish myself with several manuscript copies in Sanskrit from different quarters, such as Tanjore, Madras, and Mysore. They

were of course found to contain several clerical errors, and exhibited, in some instances, even inconsistent readings. I compared all the copies together with the assistance of learned Castris, and prepared at first a correct manuscript copy, trying at the same time to rectify all that appeared to me to be apparent clerical errors and adopting such of the readings as were found more agreeable to the context.

I then proceeded to translate the work into English, and in doing so, I divided the several parts into Chapters, Sections, and Paragraphs, for the sake of convenient reference.

Whenever I found that the texts of the divine legislator and of the sages of antiquity, cited in the Smrúti Chandrika, had been translated in the Mitákshara, Vyvahara Mayukha, Jimuta Vahana, or the Digest, I followed those versions, unless where I found that they were not consistent with the Sanskrit texts as cited in, and interpreted by the Smrúti Chandrika, in which case I have given my own translations of them.

Not unfrequently I found that one and the same text had been translated differently in each of the above books. In such a case, I adopted that translation which appeared to me best conformable to the letter and spirit of the text as propounded by the author of the Smrúti Chandrika.

Of such parts of the treatise as appeared to me to be rather obscure, I have given my own explanations in the form of notes. I have also inserted at appropriate places such of the notes of the Mitákshara,

Jimuta Vahana, and the Digest, bearing upon the doctrines treated of in the Smrúti Chandrika, as appeared to me to be too valuable to be omitted, and have further noted the variations in the readings of texts as exhibited by different authors. The chief points in which the Smrúti Chandrika differs in doctrine from the Mitákshara, I have marked; as also those on which the law, as followed in Bengal, varies from that obtaining in the Madras School. I have further quoted, in proper places, the decisions of the High Courts and the Privy Council bearing on the several points of law dwelt on in the Smrúti Chandrika, and at the conclusion of each chapter I have given a Summary exhibiting, in numerical order, the substance of the chapter as extracted from the mass of disquisitions to be found therein. I have added to the chapter treating of collateral succession a tabular sketch exhibiting, according to the Smrúti Chandrika, the successors to the property of one deceased and the order in which they are respectively entitled to inherit. In short, I have spared no pains or trouble to render the work as useful as possible.

I must here add that I felt a deep sense of responsibility in the undertaking, and this, added to the difficulty of the undertaking and to my consciousness that my labours would be subject to the criticism of the public, almost paralyzed my efforts. The patronage and support, however, which the Honourable the Government have held out to me, enabled me to persevere and complete the task ; though, of course, they by no means undertook to guarantee the correctness of the work.

That support, added to the encouragement I met with at the hands of both the Government and the Public when I had compiled a work called "The District Munsiff's Guide" in 1853, has emboldened me again to present this feeble effort of mine for their acceptance.

There may be many faults in the execution of this work, which it is hoped that the Public, considering the difficulty of the undertaking, will indulgently forgive.

T. KRISTNASAWMY.

November 1866.

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EXPLANATION OF ABBREVIATIONS.

Jim. Vah.	Jimuta Vahana.
Mit.	Mitákshara.
Vya. May.	Vyavahara Mayukha.
Mor. Dig.	Morley's Digest.
Moor. I. A.	Moore's Indian Appeals.
M. H. C. R.	Madras High Court Reports.
M. Ind. Jur.	Madras Indian Jurist.
S. H. L. B.	Stokes' Hindu Law Books.

CHAPTER I.

DEFINITION OF INHERITANCE AND OF PARTITION—DISQUISITION ON PROPERTY—PERIODS OF PARTITION.

Text of Menu.

1. MENU :—" Thus has been declared to you the law abounding in the purest affection, for the conduct of man and wife, together with the practise of raising up offspring in case of necessity. Learn now the law of inheritance (Dáya Dhárma)."

Exposition of the text.

2. The meaning is—Learn you the law which I propound relating to the wealth called " heritage" (Dáya).

Definition of "heritage," by Neghandookarer.

3. If it be asked what is the wealth called "heritage"(1) (Dáya), the Neghandookarer (the Lexicographer) says,—" The learned define heritage to be the wealth of a father, which admits of partition."

Exposition of Neghandookarer's text.

4. The meaning is, the learned call by the name " Dáya" (heritage), the wealth descending from the father *and the like*,(2) and which admits of partition.

Dharaiswara's definition of heritage.

5. Hence Dharaiswara describes " heritage" as follows :—" By 'heritage' is meant that wealth which descends either from the father or from the mother."(3)

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(1). Dáya, by derivation, signifies " what is given"—Deeyáta-Iti-Dáyah). Gift is the literal interpretation of the word " Dáya," and heritage a metaphorical sense of the term.

(2). The phrase " and the like" is not in the text of Neghandookarer. Vyvahara Mayukha, however, says that the word " father" is put in the text merely to denote relations in general, as a part for the whole—chapter iv, section ii. para. 1.

(3). The author of the Smruti Chandrika cites this text as supporting his own interpretation of Neghandookarer's text to some extent.

6. The particle "Cha" used in the above text of Dharaiswara, shews that property inherited from others, besides the father and mother, is also included in the term "heritage."

The particle "cha" in Dharaiswara's text, explained.

7. The particle "Eva" (alone) used in the above text, is said to denote property not previously vested. This, however, is not correct, for, property devolves from parents on sons and grandsons in virtue of a pre-existent right only.

Explanation of the word "alone" in Dharaiswara's text, refuted.

8. It must therefore be concluded that the Neghandookarer meant to define "heritage" to be "wealth which becomes the property of one or more persons by reason of relation to the owner, and which wealth further admits of partition."(1)

Interpretation of Neghandookarer's definition of "heritage," with reference to the above authority of Dharaiswara.

9. The law of Inheritance "Dáya Dhárma" (used in the text of Menu, para. 1) means the rule of partition, for "the duties of man and wife and *partition*" have been enumerated as among the different divisions of this work.

Meaning of the term "Dáya Dhárma" in Menu's text.

10. Sangrahakara,(2) therefore, says, "By the word Dáya, wealth descending from the father and that descending from the mother were both meant. The *partition* of such wealth is now explained."

Sangrahakara's text in support of the above meaning.

(1). Mitákshara defines "heritage" to be "that wealth which becomes the property of another, solely by reason of relation to the owner" (Mit. chap. i. sec. i. para. 2). To this definition, the author of the Smruti Chandrika adds the words "and which wealth further admits of partition:" vide chap. iv. paras. 10 and 11. The definition of "heritage," according to the Bengal law, as given in Jim. Vah. is quite different. According to that law, "heritage" is wealth in which property, dependent on relation to the former owner, arises *on the demise of that owner*—Jim. Vah. chap. i. para. 5.

(2). Sangrahakara is the author that abridged the institutes of Menu.

Exposition of Sangrahakara's text.

11. The meaning of the above passage is :—By the word "Dáya" (heritage) which forms a part of the compound term "Dáya Dhárma" (law of heritage), wealth descending from the father and the like was meant. The partition of such wealth is explained now (that is, after having expounded the whole law relative to the duties of man and wife) by Menu.(1)

Text of Menu as to how and when partition is to be made.

12. If it be asked how it is explained, Menu says, "After the (death of the) father and the mother, the brothers being assembled, must divide equally the paternal estate; for, they have not power (Aneeçah) over it while their parents live."

Sangrahakara's text in explanation of the above text of Menu.

13. Sangrahakara explains the purport of the above text as follows :—

"At what time, how, by whom, and of what sort of heritage a partition is to be made is (by the above text) explained in conformity with the Çasters."

Exposition of the above text of Sangrahakara.

14. "Of what sort of heritage"] Of estate left by the father, mother, or the like. At what time.] This is plain. How,] Whether in equal or unequal portions. By whom] whether by the father, brother, sister, or the like. All these points have been explained (by Menu) in the text, "After the death of the father, &c.," para. 12, without violation of the law of Vrrdha Menu, and others.

Conclusions to be drawn from Menu's text in para. 12.

15. By the phrase "After the death of the father," the time when the father's estate is to be divided is indicated, and, by the words, "and the mother" following the above phrase in the text of Menu, para. 12, the time when the mother's estate is to be divided is shewn.

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(1). It must be remembered here that Sangrahakara's work is a mere abridgment of Menu's institutes.

Hence, a father's estate may be divided although the mother be living. Likewise, a mother's estate may be divided although the father be alive. It is unnecessary that both the parents should have died before a partition of the property of either of them could take place.

Sangrahakara's text quoted in support of the above conclusions.

16. Accordingly, Sangrahakara, "A partition of the father's wealth may take place even whilst the mother lives, for this reason, that, without her husband, the mother does not, from her independenee, derive ownership. A partition of the mother's wealth also may take place in like manner while the father is alive, for, if there be issue, the lord (of the wife) is not the lord of the wife's wealth."

Exposition of Sangrahakara's passage.

17. Because the father's widow, without her husband, that is, even after the demise of her husband, possesses no independent(1) power over his property, and because likewise a husband, while sons are living, possesses no ownership(1) over the property of his wife, therefore the partition of the property of one of them, while the other is living, is proper. Such is the meaning of the above passage. Hence, the passage, by implication, prohibits the division of the father's property during his life-time, and that of the mother during her life-time.

The concluding part of Menu's passage, repeated.

18. This is expressly stated at the conclusion of the passage of Menu, (para. 12), by the phrase, "They have not power (Aneeçah) (2) over it while their parents live."

The term "Aneeçah" in the above part construed in a qualified sense. Authority of Cankha in support of such a construction.

19. By saying "they have not power (aneeçah"), it is meant that they have not independent power (asvatantrah). Accordingly, Çankha :—" Sons cannot divide while their father lives, although they have acquired a right to it (father's wealth)

(1). Vide chap. ix. sec. ii. para. 14.

(2). "Eeçah" signifies "master." He who is not master is termed "Aneeçah."

from (the time of their birth). They have no power to make such a partition, since they are not their own masters in respect of wealth and religious duties."

Exposition of Cankha's text.

20. Although the sons acquire a right by their birth to the paternal estate, still they are not competent to make a partition of it while the father lives, for, during that time (his life-time), they possess no independent power over wealth and religious duties. Hence they cannot divide the property.

Explanation of the term "independent power."

21. The absence of independent power over wealth means want of independent power in regard to the receipt and alienation of wealth. Accordingly, Harita:—

Authority of Harita in support of the explanation.

"While the father lives, sons are not independent in regard to the receipt, expenditure and ('Akshaipa')(1) of wealth."

Certain terms in the text of Harita, explained.

"Receipt" means the enjoyment, and "Expenditure" the disbursement, of wealth; "Akshaipa" fining the slaves and other household servants when they commit faults, in the way of chastisement. "Are not independent" are not competent to enjoy the wealth at pleasure, irrespective of the will of the father.

Explanation of Cankha's text, continued.

22. The absence of independent power in respect of religious duties (referred to in the above text of Çankha, para. 19,) means, likewise, want of competence for the separate performance of religious sacrifices, and for the separate formation of tanks, &c. for charitable purposes. It must hence be understood that the son must maintain consecrated fire (Agnihotrah), and

Conclusion from Cankha's text as respects religious duties.

(1). Akshaipa is translated as "bailment" in Colebrooke's Jim. Vah. ch. I., para. 42; as "recovery" in II Digest, page 199; and as "censure" in Borradaile's V. M., chap. iv. sec. i. para. 4. But none of these translations agree with this author, who construes the term in the sense of "amercement."

perform other religious acts with the permission of his father and not without it.

Inconsistency of Devala's text with that of Cankha reconciled by construing the term "Asvamiem" therein used as "Asvatantriem."

23. Devala says :—"When the father is deceased, let the sons divide the father's wealth, for, sons have not ownership (Asvamiem) while the father is alive and free from defect." The want of ownership (Asvamiem) referred to in this text must be construed as implying simply want of independent power (Asvatantriem), for, it is a fact established in the world that sons have(1) ownership *by birth* in the property of their father, even where the latter may be free from defect.(2)

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(1). According to the Bengal law, sons have not ownership in their father's property, ancestral or otherwise, until his demise—J. V. i. 30; ii. 9—11.

(2). From the texts of Menu, para. 12, Cankha, para. 19, Harita, para. 21, and from the text of Devala, para. 23, as interpreted by the author of the Smruti Chandrika, it would appear that sons, by birth, acquire merely a right (Svamiem) to the paternal estate, but that they possess no independent power (Svatantriem) over it until the death of their father, unless the father, during his life-time, becomes disqualified in one or other of the ways described in the texts of Harita, para. 30, Cankha, para. 31, and Nareda, para. 34, in which case the sons acquire independent power notwithstanding the existence of their father. No such distinction, however, prevails in respect of the grandfather's property, in which the grandsons are declared (chap. viii. para. 21) to possess an interest (consisting of both right and independent power) equal to that of their father during the life-time of the latter, and while he labours under no disqualification. The High Court, in their Judgment in S. A. No. 2 of 1865 (Madras High Court's Reports, volume ii. page 347), recognize fully the right of sons by *birth*, and observe, in reference to Clause 13, Section I. of the Limitation Act, that according to the Benares School, the death of the father is an event altogether without legal effect (1); that the right to a share is never a consequence of such death, and property, at all events real property, can in no circumstance be said to have descended to any member of an undivided family, because, from his birth, he is a *joint* tenant with the rights of survivorship. The Judgment of the High Court further contains the following remarks with reference to Clause 13, Section I. of the Limitation Act.

"It is equally unnecessary to say whether its (Clause 13, Sec. I.) effect, where it has any operation, is in all circumstances to compel a suit for parti-

(1). Quære. Whether the death of the father has not at least the legal effect of conferring on the sons *independent power* over his property under the texts of Menu, Cankha, and Harita, above quoted?

(1). Quære. Whether, with reference to these remarks, that portion

24. The objector here says :—" Ownership (Svamya) is not a worldly matter, but deducible from the Çastra or sacred institutes alone, and that therefore the sense of the above text of Devala is vitiated by saying that it is a matter established in the world that sons have ownership by birth. It cannot be alleged that ownership (Svamiem) is but nominally said to be deducible from the Çastra, for, the reason why it should be considered as deducible from the Çastra has been set forth by Sangrahakara in the following passage. 'One cannot be the owner of a property, simply because he is in possession of it, for, does it not occur that possession by one of another's property is obtained even by theft or other nefarious means ? Therefore, ownership is deducible from the Çastra alone and not from mere possession. The meaning of this passage is that a thing cannot be concluded to be the property of one, simply because it remains in his possession, for, if so, one that obtains

Opponent's arguments against the propriety of the above construction. Ownership is deducible from the Castra alone.

Sangrahakara's text shewing the reason why ownership should be considered as deducible from the Castra, cited.

Meaning of Sangrahakara's passage.

of Clause 13, Section I. of the Limitation Act which prescribes for suits to share in joint family property a limitation of 12 years "from the date of the last payment to the plaintiff or any person through whom he claims, by the person in the possession or management of such property or estate on account of such alleged share" is not also applicable to the province of Madras, and if so, what is the law of limitation observable in the province of Madras in cases where the exclusive possession of the whole of the father's estate has been held to the exclusion of one by the other co-parceners ? For the rule of limitation according to the Hindoo Law as laid down in the Smruti Chandrika as regards cases like the above, vide chap. xvi, paras. 14 and 15. tion within 12 years, or whether it is confined to cases in which exclusive possession of the whole of the father's estate has been held to the exclusion of the others by one of the brothers, or co-parceners in accordance with some texts of the Bengal law in happy conflict with others. We say that it is unnecessary to decide, and we gladly abstain from deciding these points, because it is manifest that the section applies to cases of the Plaintiff's right accruing *by descent*. It is manifestly therefore wholly inapplicable to the case of these provinces, in which the right to property and of consequence to partition does not accrue in the manner described in this section(1). Vide also note to chap. viii. para. 11 of this treatise.

possession of another's property by theft or the like, would have also to be called the owner of such property. Therefore, ownership is deducible from the Çastra alone and not from other (temporal) proof. Again, if one was to be absolutely concluded from mere possession to be the owner of a property, no one could say in the world 'the property of such a man has been wrongfully taken by such a man,' ownership in that case being supposed to attach to any man that is in possession. Besides, if ownership was deducible from any other proof than that of the Çastra, the restrictions which the Gautama's text, 'Acceptance is for a Bramin an additional mode, conquest for a Kshatriya, gain for a Vaiçya or Sudra,' impose, as to the modes of acquisition with reference to each tribes would become useless, other temporal proof being alone considered to be the criterion of ownership. These two objections have also been noticed by the same author (Sangrahakara) in the following passage. 'If otherwise, it could not be said that such a thing was wrongfully taken by such a man. What has been, in due order, laid down in the Çastra by the phrase 'acceptance conquest, trade, servility and the like,' with reference to each tribe separately, (becomes useless).' So much of the above passage as ends with 'by such a man' exhibits the first objection, and the rest of the passage, with the addition of the words 'becomes useless,' the second objection. Property, (Svatva)(1) too, like ownership (Svamya), must be understood to be deducible from the Çastra alone, 'Svamya' and 'Svatva' being both of the same quality,

Another reason why ownership should be considered as deducible from Castra alone.

Sangrahakara's text exhibiting both the reasons.

Ownership and property are both of the same quality.

(1). Property (Svata) has reference to the thing, and ownership (Svamya) to the person. The relation which a thing bears to its owner is called "Svatva," and the relation which an owner bears to his property is called "Svamya."

and the arguments urged in reference to one of them to show that it is deducible from the Çastra applying with equal force to the other. Sangrahakara, however, adverting to 'Svatva,' too, proceeds to describe how both "Svatva" and "Svamya" are inferrible from the Çastra alone. 'A thing cannot be said to be the property (Svatva) of a man, simply because he can, at his will, exercise the power of alienation over the same, for, alienation of every thing is subject to the restrictions of law.' The meaning of this passage is:—One cannot argue, 'I do not say that a thing is the property (Svam) of one, because it is seen in his possession, but I say that a thing over which the power of alienation may be exercised by one at will is his property. This cannot be said to be a fallacious reasoning, for, a thing usurped and the like are not to be alienated at will, and cannot, consequently, be called the property of the usurper, and the like.' The alienation of every kind of property, even of that to which one has a legal right, is restricted by law to certain specified purposes, such as the maintenance of priests, servants, and the like. There is hence nothing over which a man can exercise the power of alienation at will. Dharaiswara Çuri also maintains the same principle. Since, thus, 'Svamyem' and 'Svatvam' are both shewn to be the result of the Çastra alone, and since, by the text of the Çastra, 'Sons have not ownership while the father is alive and free from defect, para. 23,' it is settled that sons have not ownership by birth, it is necessary that the text of Çankha, which, among other things, says, 'Although they (sons) have acquired a right to it (father's wealth) from the time of their birth, para. 19,' should be construed differently."(1)

Property too, like ownership, is deducible from the Castra.

Sangrahakara's reasoning in reference to property.

Exposition of Sangrahakara's passage.

Conclusion of the objector's arguments.

(1). How this is to be construed the objector does not say.

25. Reply of the author. I do not call that the property of one, over which *he can* perform the act of alienation at will (Yethaista Veneyojeyam), but I call that his property which is *capable* of being alienated by him at will (Yethaista Veneyogarham).

Reply to the objector's argument, founded on Sangrahakara's text in reference to property.

26. The objector again says: "Since the Çastras contain restrictions as to alienations, and limit the alienations to the maintenance of priests, servants, and the like, it follows that there is nothing (in the world) over which the act of alienation may be performed at will. In the absence of any such act as alienation at will, there could of course, be nothing that can be called 'capable of being alienated at will.'"

Objection against the above reply.

27. This is incorrect. Even if there should be no such act as alienation at will, a thing may be called capable of being alienated at will. Accordingly, Bhavanatha, in his Naya Viveka, says "That which was acquired by one is to him capable (of being alienated at will"). The particle "Cha," used in the above passage of Bhavanatha, is intended to denote that, in his (Bhavanatha's) opinion, capability to be alienated at will admits of being defined just in the same manner as "Svatva" or property does. To avoid supposing that if so, a property obtained by theft would be also capable of being alienated at will by the thief, the same author (Bhavanatha) adds, "The modes of acquisition by birth, &c. are the modes recognized by popular practice." The meaning is, that such acquisitions only as are made by birth, purchase, partition, seizure, finding, and the like, are recognized by the world, and they alone(1) confer ownership and not an acquisition made by theft or the

Objection obviated.

Bhavanatha's passage as to acquisitions recognized by the world.

Exposition of Bhavnatha's passage.

(1). This is opposed to the principle of Mitákshara, who maintains that even what is gained by infringing restrictions is *property*—Mit. chap. i. se . i. para. 10.

like. The particle "Cha," used in the above passage of Bhavanatha, is intended to denote the practicability of refuting fallacious reasoning. If it be asked then, what rule is there to show that such a mode of acquisition has been recognized by the world, and such a mode has not, the same author states: "A Smruti or code of law, like grammar and the like, has been framed in order to show what are the rules established in the world from the earliest period." The purport is that such modes of acquisition alone as have, from the beginning, been recognized by the world, are capable of conferring ownership; that they are necessary to be learnt in order to ascertain how property can be acquired in both worldly and religious matters; and that, therefore, with the object of shewing what are the modes of acquisition thus recognized by the world, the institutes of law (Dharma Smruti) framed by Gautama and others set forth, "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Bramin an additional mode, conquest for a Kshatriya, gain for a Vaiçya or Sudra," in the same way as a grammar does show what are the correct expressions in a language as long acknowledged in the world.

Bhavanatha's passage to show that a Smruti shews, by way of mere repetition, what has been established in the world.

Exposition of Bhavanatha's passage.

Gautama's Law describing the several modes of acquisition recognized by the world, cited.

Inheritance. Gain by inheritance; that is, a right which a son or the like acquires by birth over property of the father or the like. Gautama explains in the following passage the origin of the son's title to the paternal estate. "The venerable teachers direct that ownership to wealth is acquired by birth alone." By birth alone] By the very formation of the fœtus in the mother's womb.

Meaning of certain terms used in the passage.

Partition. Partition which confers a special or exclusive ownership on the sons, and the like, over the paternal estate.

Seizure is the appropriation of water, grass, wood, and

the like, not previously appertaining to any other (person as owner).

Finding is the discovery of a hidden treasure, and the like.

Exposition of Gautama's passage.

If these reasons exist, the son, &c., the purchaser, the sharer, the seizer, and the finder, become respectively the owners of the property derived from the father, &c., sold, divided, seized, and found. Acceptance is an additional mode of acquisition exclusively appertaining to a Bramin. Likewise, for a Kshatriya, what is obtained by victory is peculiar. Nirvishtam(1) or what is gained in the way of hire by agriculture, and the like, is for a Vaiçya peculiar, and so is for a Çudra; Nirvishtam, or what is earned in the form of wages by doing service to the regenerate. Thus, the meaning of the law of Gautama, prescribing the several modes of acquisition, must be understood. What Sangrahakara has stated under the text "One cannot be the owner of a property simply because he is in possession of it, &c., para. 24," and what Dharaiswara Çuri has propounded, must all be considered as useless. The inconsistency of the text of Devala, "Sons have not ownership (Svamiem) while the father is alive and free from defect; para. 23," with the passage, para. 18, of Çankha, which declares sons to have acquired a right by birth to their father's estate, must be reconciled only by construing the former text in a manner not strictly literal, (that is, by construing the term "Asvamiem" as "Asvatantriem," as shewn in para. 23). Thus much is sufficient to meet the objections of the opponent.(2)

The right doctrine asserted.

(1). "Nirvishtam" is derived from "Nirvesam," which is exhibited in the 3rd book of the Amarakosha (Dictionary of Amarasimha), chap. iv. verse 217, as signifying "wages."

(2). The objector's arguments and the reply thereto are, *in substance*, as follows—

The objector says:

I. That ownership (proprietary right) as well as property, are deducible from the Castra alone.

Inference to be drawn from Devala's text.

28. Now, from the digression; the use of the phrase "free from defect" in the text of Devala, para. 23, serves to indicate that where a father labours under a defect, the sons become independent of him. It must consequently be understood, that even where a father is alive, if he be disqualified, independence in respect of the receipt and expenditure of the wealth becomes vested in the eldest son, and that the other sons are to remain under his control. Hence, Çankha and Likhita: "Should the father be incapable, let the eldest manage the affairs of the family, or with his consent, a younger brother (Anantara) conversant with business."

If father becomes disqualified, the eldest son acquires independence.

The passage of Cankha and Likhita quoted in support of the opinion.

29. With his consent] With the consent of the eldest son

II. That the text of Devala, cited in para. 23, is a Castra.

III. That, according to the plain terms of this text, ownership in sons does not accrue till the death of the father or till he becomes disqualified by age, &c.

IV. That, therefore, the author of Smruti Chandrika misinterprets the text by saying,—

1stly.—That ownership is a matter of popular recognition.

2ndly.—That, according to popular notion, it arises *by birth* in sons.

3rdly.—That therefore the text of Devala, which declares sons not to possess ownership till the death of their father or till he becomes disqualified by age, &c., must be construed not in its literal sense, but as implying that sons, though possessing ownership by birth, do not possess an independent power over the property till the death of their father or till he becomes disqualified by age, &c.

The reply is :—

I. That ownership and property are worldly matters.

II. That the Castras are merely demonstrative of the rules that have been established in, and recognized by, the world.

III. That, according to the law (Castra) of Gautama, which describes the several modes of acquisition recognized by the world, sons acquire a right *by birth* to the paternal estate.

IV. That Cankha's text, cited in para. 19, is in accordance with the above Castra.

V. And that therefore the text of Devala must not be construed literally, but in conformity with the above Castra.

who then possesses the independent power. Younger brother "Anantara" signifies generally a brother of the eldest (whether he be the next younger brother or not); competency to transact business and not seniority of birth being here essential. The incapability contemplated by the above text in the father is decay, and the like.

Exposition of the above passage.

30. Hence, Harita :—" But if he be decayed, remotely absent, or afflicted with disease, let the eldest son manage the affairs as he pleases (Kamam.)" (1)

Harita's text as to when the eldest son is to manage the family affairs.

31. If he be decayed, &c.] This must be read "If, *while the father lives,* he (the father) be decayed, &c."; the expression " while the father lives," being understood in the former text, para. 28, and being also required here. By the use of the phrase, " as he pleases (Kamam)," in reference to the eldest son, in the above passage, the dependence of the sons on their father is shewn to have then ceased. As such a cessation necessarily creates in the sons a right to divide the paternal estate, a partition can then take place at the will of the sons only. Hence, Cankha :—" Partition of inheritance takes place without the father's wish if he be old, disturbed in intellect, or attacked with lasting disease."(2)

Exposition of the text.

Partition at the will of sons may take place on the occasions referred to by Harita.

Cankha's text as to when partition may take place at the will of sons.

32. Without the father's wish] While a father has no wish that a partition should take place. If he be old] If he be *extremely* old.(3) Disturbed in intellect] Deranged in mind.

Exposition of Cankha's text.

(1). There is another reading of this passage, Kamadáné, " if he be prodigal" instead of Kamamdiné. See Vivada Ratnakara.

(2). This text is read differently in Jim. Vah. chap. i. para. 42, and its import is the reverse of the one cited here. See also note to Jim. Vah. chap. i. para. 43.

(3). Where a father is not *very* old, but simply advanced in years, the power of making a partition in the family is declared to be in him and not in the sons—chap. ii. sec. i. paras. 31 and 33.

33. The purport of the text hence is that if the father should lose his independence by old age or the like, the sons are then competent, at their own will, to make a partition of his property even without his will.

The conclusion to be drawn from the text of Cankha.

34. The phrase "attacked with lasting disease" used in the above text of Çankha, refers also to one influenced by lasting wrath. Hence, Nareda :—"A father who is afflicted with disease or influenced by wrath, or whose mind is engrossed by a beloved object,(1) or who acts otherwise than the law permits, has no power in the distribution of the estate." Here add the words "but the sons have power."

Nareda's text on the same subject.

Who acts otherwise than the law permits] Who pursues a course not warranted by the law.

35. The same author adds that, in some instances, partition may be made by the sons alone even where the father labours under no defect :—"Let sons equally divide the wealth when the father is dead, or when the mother(2) is past child-bearing, and the sisters are married and when the father's sensual passions are extinguished and his affection (Spriha) or desire for worldly concerns have ceased."

The same author's text as to when a partition may be made by the sons even where the father labours under no defect.

36. The first hemistich of the above passage ("Let sons divide equally the wealth when the father is dead") apparently refers to a partition taking place *after* the demise of the father, and yet the hemistich has been inserted here in order to complete the meaning of the second hemistich. The meaning of the second hemistich is, that where it is ascertained that the father is no longer competent to beget issue, where the daughters have all been married, and where

Exposition of the above text.

(1). This ordinarily means "who becomes voluptuous."

(2). The word "mother" includes a stepmother also. See note to Jim Vah. chap. ii. para. 1.

the father's attachment to wealth has become extinct, the wealth is to be shared by the sons alone.

The partition, however, in the case referred to in the above text of Nareda is to take place with the permission of the father.

37. Baudhayana confers, in this instance, a power on the father to grant permission to effect the partition. "A partition of the heritage is to take place with the permission of the father."

Nareda's text as to when a partition is to be made by the father himself.

38. If it be asked, in what case then a partition is to be made by the father himself; Nareda: —"Or the father alone, being himself in age, may, at his own instance, divide the estate among his sons." By the words "being himself in age," it would appear that this passage is applicable to the case of a father who has not been deprived of his independence. While the particle "Eva" (alone) used in the text is in itself sufficient to shew that the partition is to be made by the father, the term "himself (Svayem)" being also used in the text, shews that it is needless in such a case that the sons should also give their consent. The disjunctive particle "Va" (or) used in the text and which indicates an alternative, denotes that the father (instead of dividing the property with his sons) may live together with them, and not that partition may be made by any one else besides the father. The alternative indicated by the particle "Va," is in favour of common abode alone.

The object of the particles "Eva" and "Va" used in the text, explained.

Veyasa's text enjoining the common abode of father and sons.

39. Veyasa, too, accordingly: "Of brothers and the living father, the common abode is enjoined."

The common abode of brothers recommended, even after the demise of their father, on the ground of its promoting the family wealth.

Cankha and Likhita's text quoted in support of the opinion.

40. Even after the demise of the father, the common abode of brothers is preferable for the common acquisition of property. Accordingly, Çankha and Likhita:— "Willingly let them live together; by union, they exhibit thrift." This is because there are not, in such a case,

the expenses attendant upon the separate residence of the co-heirs.

41. But where the co-heirs become divided, religious duties increase, as observed by Gautama in the passage, "Religious duties increase in case of partition."

Religious duties increase in case of partition; Gautama's text.

42. If it be asked how they increase, Nareda says :—"The religious duties of unseparated brethren are single. When partition, indeed, has been made, religious duties become separate for each of them."

Nareda's text in support of the opinion.

Religious duties. Duties relating to the worship of manes, deities and bramins.

43. Brahaspati, too, "Among co-heirs living in commensality, *i.e.* with one dressing of food, the worship of manes, deities and bramins takes place in one house only ; but, in a family of divided brethren, the above acts are performed in each house separately.

Brahaspati's text on the same subject.

44. The objector says; the religious duties connected with the consecrated fire (Agnihotra), &c., are multiplied in the case of divided brethren only and not in the case of the undivided. Because undivided brethren are wanting in ownership, it is impracticable for them to derive the benefits of consecrated fire, &c. to be kept by each of them. Hence, the benefits of consecrated fire and the like must also be urged as a reason why partition among brethren is preferable. Sangrahakara, too, accordingly says :—"The ownership of sons in the wealth of a father is produced by partition. When ownership is generated, (the right of each to maintain perpetual or consecrated fire and the like) comes in, and the separation is therefore lawful." The words "the right of each to maintain perpetual or con-

Objector's opinion that the increase of religious duties connected with "Agnihotra," &c. is also one of the reasons for preference being given to partition.

Sangrahakara's text in support of the objector's argument.

secrated fire" must be understood before the terms "comes in" in the above passage.

45. Reply. It is improper to say that the ownership of sons in the wealth of the father is produced by partition. It has already been shewn that ownership in sons is generated by birth alone. Undivided brethren also hence possess ownership, and therefore the benefits of consecrated fire, and the like, to be kept by each of them, accrue in their case also. There is consequently no reason to prefer division to non-division *on this ground.*

The opinion of the objector refuted.

46. It must therefore be understood that the religious duties which Gautama and others have declared, para. 41, as increasing in case of partition are duties (not of consecrated fire, &c.), but those that have already been noticed, paras. 43 and 44, (namely, the worship of manes, deities and bramins).

Correct interpretation of the words "religious duties" used in Gautama's text.

SUMMARY (BY THE TRANSLATOR.)

I. Heritage defined to be "wealth which becomes the property of one or more persons by reason of relationship to the owner, and which wealth further admits of partition."

II. The partition of the father's estate takes place after his death, and that of the mother after her death.

III. Sons acquire a right *by birth* to the wealth of their father, but they are not *independent* in respect of their father's wealth during his life-time.

IV. When, however, the father becomes—

I. Decayed.
II. Remotely absent.
III. Afflicted with lasting disease.
IV. Extremely old.
V. Disturbed in intellect.
VI. Influenced by lasting wrath.

VII. Voluptuous.

VIII. Addicted to a course not warranted by the law,

the sons acquire independent power, and they are then justified in making a partition of the family property at their own instance, irrespective of the will of the father.

V. Even where the father is not disqualified in any of the ways above-mentioned, a partition may be made by the sons, provided the mother is past child-bearing, the sisters are all married, and the temporal affections of the father have become extinct. In these cases, however, the father's permission is necessary to make the partition.

VI. At a period, however, when the father has not lost his independence, he is at liberty to make a partition with his sons, irrespective of the will of the latter.

VII. Common abode of co-heirs tends to the increase of family wealth, and partition to the promotion of religious duties.

CHAPTER II.

PARTITION.

SECTION I.

PARTITION DURING LIFE-TIME OF THE FATHER.

Çankha and Likhita's text as to how partition is to be made during life-time of the father.

1. Çankha and Likhita:—"That partition which is permitted while the father lives must take place, according to law, either openly or privately." (1)

Exposition of the above text.

2. The partition during life-time of the father, which is permitted (by law), must be made either openly, that is, in presence of relatives, &c., or privately, that is, secretly, according to law, *i. e.* without violation of the law.

Kátyáyana's text in favour of equal partition.

3. Kátyáyana explains the mode of such partition:—"That partition is declared legal by which the parents and brothers take the entire estate in equal shares."

Exposition of the above text of Kátyáyana.

4. The meaning of this text is that, where, in a partition, the parents and others take in equal portions, but not otherwise, the *whole* estate belonging in common to the family, such

(1). This passage is rendered in II Digest, page 205, thus:—"While the father lives, the estate may be divided with *his* consent, openly or privately, according to law." This version does not seem to agree with the original text as cited in the Smruti Chandrika, for two reasons: 1stly, the Sanskrit word "Anumatah," occurring in the original text, implies "permitted," and goes to qualify "Vibhagah" (partition), and there is nothing in the original text justifying the insertion of the word "his" in the translation; 2ndly, such a version would militate against the several passages in the previous chapter, which allow partition in many instances, during life-time of the father, against his will and at the instance of the sons only.

a partition being recognized by law, is declared to be one made in conformity with the law.

Baudhâyana's doctrine.

5. Baudhâyana, in order to shew that there is a different law by which a partition assigning a greater share to the eldest brother is declared legal, premises as follows :

Baudhâyana's passage in favour of equal partition.

6. "The shares of all are equal, it being without distinction laid down in the Çruti, 'Menu distributed his heritage among his sons.'"

Exposition of the above passage.

7. In the Scripture (called Brahmanum) treating of partition during life-time of the father, it is said, "Menu distributed his heritage among his sons." No distinction is observed here as to the shares of the several sons. Under the principle that equality must be the rule, where there is nothing laid down to the contrary, it appears from this Çastra alone that the shares of father and sons are all contemplated to be equal.

Baudhâyana's passage in favour of *unequal* partition.

8. As for the eldest son, the same author (Baudhâyana), observing that another Çruti(1) sanctions a greater share being allowed to him, says, "*Let the eldest take one most excellent chattel* (Dhana); it being declared in Çruti :—'It is necessary to gratify the eldest son with wealth (Dhana).'"

Attention drawn to the singular number in which the word "Dhana" is used in the Çruti.

9. Baudhâyana, in using the words "*one* most excellent chattel," draws attention to the use of the term "Dhana" in the singular number in the Çruti.

Certain erms in the passage cited in para. 8, explained.

10. "Necessary to gratify," means necessary to please.

A'pastamba's passage in favour of unequal partition.

11. A'pastamba, too, accordingly :—"Having gratified the eldest son with one chattel, let the father, in his life-time, distribute the heritage among his sons in equal shares."

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(1). This is the different law referred to in para. 5, but this law prevailed in former ages (chap. iii. paras. 18 and 19), and was applicable to self-acquisition alone. See chap. viii. para. 19.

12. The father, when alive, after having satisfied the first or eldest son with one superior chattel, deducted out of the common wealth, may make a partition of the remainder by assigning to himself and his sons, inclusive of the eldest, equal shares.

Exposition of the above passage.

13. Thus, the deduction is made solely on account of seniority in birth, and that deduction must be of one chattel only, the best of all. The residue must be divided in equal portions. This must be considered to be the other mode of legal partition.

Why and how deduction is to be made.

14. Of the two modes of partition prescribed, as above shewn, by Kátyáyana, para. 3, and Baudhâyana, para. 8, respectively, that which the father wishes to follow, he may adopt; for, in a partition made by the father, he alone is the lord, and the selection of one or the other mode of partition rests entirely with him.

Father to select one or the other mode of partition.

15. Yájñavalkya,(1) referring briefly to all the above principles, states: "If the father should make a partition, let him separate his sons (from himself) at his pleasure, and(2) either (dismiss) the eldest with the best share, or (if he choose) all may be equal sharers."

Yâjnavalkya's text recognizing both the modes.

16. In the second hemistich of the above Çloka, the two modes of partition above shewn have been indicated in the inverse(3) order. The first hemistich must be understood to declare that the adoption of one or the other of the above two modes is a matter entirely within the discretion of the father *alone*,

Exposition of the above passage.

(1). Mit.—chap. i. sec. ii. para. 1.

(2). Here commences the second hemistich of the text.

(3). This is because, in this treatise, equal partition is noticed first and then unequal partition. Whereas, in the text of Yájnavalkya, the reverse is the order.

and not of the sons also. Therefore, whichever mode the father chooses to adopt by his own will, must be assented to by the sons, although they may not like the same.

Another text of Yâjnavalkya shewing that a legally partial distribution is valid.

17. Accordingly, the same author :—" A legal distribution made by the father among sons separated with greater or less shares, is pronounced valid."

Exposition of the above text.

18. Sons other than the eldest are separated with less shares, no greater share being prescribed in their case. The eldest being vested with a right to a superior share is separated with a larger portion of the property; thus, in the case of the eldest and the other sons, the father is at liberty to adopt, what is called " a partition with deduction." Nevertheless, the sons are to assent to it, such a mode of partition being sanctioned by law and declared above to be legal.

Nareda's text on the same subject.

19. Nareda, too, holds the same principle : " For such as have been separated by their father with equal, greater, or less allotments of wealth, the distribution actually effected is the legal one, for, the father is the lord of all.

Exposition of the above text.

20. Where the father gives equal shares to all his sons, the eldest ought not to express dissatisfaction by saying " One best chattel was not given to me by the father in excess." Likewise, where the father makes unequal partition, the younger brothers should not express dissatisfaction by saying " Less shares were given to us by the father, while a greater share was assigned to the eldest." For, in either case, the father's will alone renders the partition legal. If it be asked how this can be, the reply is to be found in the text itself (para. 19) which states (in conclusion) " the father is the lord of all;" thereby meaning that the father is at liberty to effect any kind of partition he likes.

21. Those that do not abide by a legal partition made are punishable. Accordingly, Brahaspati :—" Sons to whom equal, less, or greater shares have been allotted by their father should maintain such a distribution; otherwise, they shall be chastised."

Brahaspati's text to show that sons must abide by a legal partition made by father.

22. To the words "allotted by their father," should be added the words "in the manner prescribed by law." For, an allotment made in a manner different from that prescribed by law being illegal is not fit to be maintained. If, for instance, a father, out of his property, even though it is self-acquired, gives one son a thousand "Nishkams" (gold coins) and dismisses the others with a simple "Kapardika" (shell) at his (father's) own pleasure, such a partition cannot hold good; for, property vests only on such a kind of partition as has been recognized by popular practice. It cannot, however, be said here that an unequal partition made at the caprice of the father is also one sanctioned by popular practice, because it is laid down in the Smruti[1] (law), "Let him separate his sons *at his pleasure*," para. 15. The Smruti in question, it must be observed, does not contemplate such a kind of (capricious) partition.

Interpretation of the above text.

An illegally partial distribution is improper.

23. Apararka finally construes the above passage as justifying a mode of partition of this (capricious) nature too, though such a mode is improper in itself. But this construction should be rejected as being opposed to the sound construction above set forth.

Apararka's construction, rejected.

24. It is hence settled that unequal distribution made by the father even of his self-acquired property, according to his whims,

Conclusion.

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(1). A Smruti, as already noticed in chap. i. para. 27, shews simply the rules established in, and recognized by, the world from the earliest period.

without regard to the restrictions contained in the Çastras is not maintainable, where sons are dissatisfied with such distribution.

Apararka's construction of an expression in the above text of Yájnavalkya, also rejected.

25. Apararka again says, that the words "Either dismiss the eldest with the best share" used in the text, para. 15, of Yájñavalkya, above quoted, embrace(1) all the modes of deduction prescribed by Menu in the passage, "The portion deducted for the eldest is the twentieth part of the heritage" (chap. iii. para. 8); and by the other legislators. This construction is also to be rejected, for the words in question apply properly to that special mode of deduction alone, which is ordained in case of partition during life-time of the father by the passage, "Let the eldest take one most excellent chattel, &c.," para. 8.

Reasons for the rejection.

Father is to have two shares. Text of Vrddha Brahaspati.

26. Vrddha Brahaspati prescribes a different mode of partition by allowing a greater share to the father. "The father may himself take two shares at a partition made in his life-time."(2) It must be read here "at a partition made *by the father himself* in his life-time."

Nareda's text on the same subject.

27. Likewise, Nareda: "Let the father, making a partition, reserve two shares for himself."

Interpretation of the above passage.

28. By saying "making a partition," it is made manifest that two shares may be reserved by the father, only where he, the father, makes the partition, but not where the sons make it during his life-time.

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(1). This is opposed to the doctrine of the Smruti Chandrika, vide para. 13.

(2). This is of the father's property, but, in coming to a partition of the ancestral property, the father and sons are entitled to like shares only—Mit. chap. i. sec. v. para. 5. According to the Bengal law, however, the father is entitled to a double share even of the ancestral property—Jim. Vah. chap. ii. para. 20; see also note to chap. viii. para. 21 of this treatise.

29. Even in the case of partition made by the father, Çankha and Likhita allude to a distinction in regard to the father reserving two shares for himself :(1) "If there be one(2) son, let himself (the father) reserve two shares."

Cankha and Likhita's text allowing two shares to the father where there is one son.

30. The word "himself" used in the passage refers to the father in each instance. By the mention of the condition, "If there be one son," the passage must be understood to apply to such a case only as where the father is past the time of begetting, or, in other words, where the father is decayed by age.

Interpretation of the above text.

31. Hence, Harita allows an *aged* father a greater share, even where he has got several sons, and thus prescribes a mode of unequal partition between him and his sons. "A father making a complete partition during his life-time, may either go to the forest or enter into the order suitable to an aged man ;(3) or, he may divide a small part of his fortune (among his sons) and remain in his house, keeping the greater part of it : should he become indigent, (4) he may take it back from them, and he must also give a portion to sons reduced to indigence."

Harita's text allowing a greater share to the father where he has got several sons also.

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(1). In Jim. Vah. chap. ii. para. 59, this passage is translated thus:—"If he be son of one father, he may allot two shares to himself." See also note to the above.

(2). Vachespati Miçra, with the author of Madanaratna and others, explains "One" as signifying excellent, and pre-eminent, or, in short, virtuous; see note to Jim. Vah. chap. ii. para. 59.

(3). The order suitable to an aged man] If the period for becoming an anchoret be arrived, let him become an anchoret ; if the period for the order suitable to old age or that of a resigned recluse is come, let him make his resignation : or if neither of these be the case, the author declares he may remain having distributed allotments, having given them to his sons or other descendants. But if that, which he reserved, be wasted by consumption or use, he may take back for his maintenance from his sons to whom he gave allotments—Daya-rahasya. Note to Jim. Vah. chap. ii. para. 57.

(4). Should he become indigent] Should the property reserved by him be expended (Achyuta), or should he have consumed all his wealth (Crikrishna).

Exposition of the above passage.

32. The father, dividing among his sons a small fortune, that is, wealth equal to half of his own portion and keeping to himself a greater part, namely, a double portion, may remain at home. If, when so remaining, he should become indigent and suffer for want of food, &c., he may then take from the sons so much of the wealth acquired by them with the portion allotted to them by himself as would be sufficient for the maintenance of his own family. If, on the other hand, the sons should become indigent and suffer for want of food, &c., the father is then to give them a portion as before.

Certain terms in the passage explained.

33. Go to the forest] Become a hermit. Order suitable to an aged man] Fourth order. These words indicate that the passage is applicable to an *aged* father.(1)

Crutis quoted in support of the above passage of Harita.

34. Therefore, since a father, in his old age, is dependent on his sons, the purport of the Çruti which says, "It(2) is the same as that of the father running in distress to his son" is reasonable in his case. Likewise, since a son takes but a small portion of his father's wealth, the purport of the Çruti, which says, "It(3) is the same as that of a son running in distress to his father" is reasonable in his case. The author (Harita) bearing in mind the above Çrutis, exhibits the principles of both of them, (namely, that of a father running to his son, and that of a son running to his father), in his passage by the words (para. 31), "Should he become indigent" and so forth. In order to show that the rules contained in his own law in the passages, (para. 31), "He may take it back from them," and, "He must give a portion to sons reduced to indigence," have

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(1). But not *very* aged, as, in that case, the partition of inheritance will take place without the father's wish under chap. i. paras. 31 and 32 of this treatise.

(2). "It" refers to a religious sacrifice contemplated in the Cruti.

(3). "It" here also refers to the same religious sacrifice.

their origin in Çruti, the author himself quotes concisely, as shewn below, two Çrutis bearing a similar import.

Harita's own passage, quoting Cruti.

35. "Another instance is given here of a Çruti providing at a sacrifice the means of supplying juice to a 'graha' or jar when it is exhausted. That Çruti is, 'The father takes the place of the 'graha' or jar called 'Agrayanam,' and the sons take the place of the other grahas or jars. If Agrayanam is exhausted or drained, the juice is supplied from the other grahas. Likewise, if the other grahas are exhausted or drained, the juice is supplied from the graha Agrayanam.'(1) Thus it is explained."

Certain terms in the above passage explained.

36. Providing at a sacrifice the means of supplying juice to a 'graha' or jar when it is exhausted] Making arrangements for feeding a "Somagraha" or jar in which the "Soma" or Asclepias acida is employed, when it is emptied. "Agrayana" is a kind of Soma jar. The other grahas are jars other than "Agrayanam," such as "Aindravayava" (jar representing speech and breath) &c. Exhausted or drained] Emptied. The particle "Yiti" has been made use of in the concluding part of the above quotation as indicative of the other Çruti. Thus it is explained] By using this expression, Harita means to say that he has explained the substance of the above Çruti by the two sentences, "Should he become indigent, he may take it back from them," and, "He must also give a portion to sons reduced to indigence." (Para. 31.)

Equal partition may be made even in the case contemplated by Harita.

37. Here, too, (that is, even in the case contemplated by the text of Harita "A father making a complete partition, &c." para. 31,) an equal partition may be made, if that should be the will of the father; for, Kátyáyana who explains the mode of partition during life-time of the father by the text, "That partition is declared legal by which the parents and brothers take the entire estate in

(1). Here the particle "Yiti" has been used in the original text to which allusion is subsequently made.

equal shares," para. 3, declares the above mode of equal partition to be of universal application.

Wives to be rendered partakers of equal portions, where equal partition is made. Yájnavalkya's text.

38. If, therefore, in the instance under contemplation, the father, of his own will, should make an equal partition, then Yájñavalkya says, "If he make the allotments equal, his wives to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions."

Exposition of the above text of Yájnavalkya.

39. The meaning of this text is, that where a father, even where he is old, chooses to render all, inclusive of himself, partakers of equal portions, then he ought to take, on account of *each* of his wives, a share equal to that taken by himself. Hence, the doubt whether the above text of Yájñavalkya is not opposed to a passage(1) of Harita, which declares: "Partition does not take place *between* a wife and her lord," is also removed.(2) Thus, every thing is rendered right.

A trifle may be given to a son who needs not a full share. Text of Yájnavalkya.

40. Where a son, from ability to earn wealth, does not wish for his share of the paternal estate, the father is to separate him from himself by allowing him so much of his portion as he is willing to accept. Accordingly, Yájñavalkya: "The separation of one who is able to support himself and is not desirous of participation may be completed by giving him some trifle."

Where partition is made by sons during life-time of the father, there is to be equal distribution only.

41. Again, where, during life-time of the father, the sons themselves (without the father's agency) make the partition, equal distribution is the only mode of partition to be adopted in the manner enjoined by the text of Kátyáyana: "That partition is declared legal," &c., para. 3. The reasons for this are,—

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(1). This passage occurs also in chap. iv. para. 11 of this treatise.

(2). This is because, according to Yájnavalkya's text, the wives do not take the share, but the lord takes it on their account.

Reasons in support of the conclusion.

1stly. There is no rule in the Çasters prescribing a different mode of partition, where it is made through the agency of sons during life-time of the father.

2ndly. As shewn in the previous chapter when speaking of partition to be made by sons during life-time of the father, Nareda has enjoined equal partition by the text (chap. i. para. 35), which, after beginning with "Let sons *equally* divide the wealth," proceeds "when the mother is past child-bearing, and so forth."

End.

42. Thus partition during life-time of the father is explained.

SUMMARY (BY THE TRANSLATOR).

I. A father making partition during his life-time may either divide the estate among himself and his sons in equal shares, or give one best chattel to the eldest son and divide the residue in equal shares.

II. The selection of one or the other of the above two modes rests entirely with the father, and the sons have no voice in the matter.

III. Where partition is made by sons during life-time of the father, for reasons noticed in paras. 30 to 37 of the preceding chapter, the shares of all must necessarily be equal.

IV. Where an aged father makes partition during his life-time, he may take two shares for himself.

V. But this right does not exist in the father where partition during his life-time is made by the sons.

VI. From its being provided that a father possesses the right of reserving two shares for himself where he is *aged*, it would appear that where the father is in the prime of manhood and makes a partition, as stated in paragraph 38 of the preceding chapter, he possesses no such right.

VII. An aged father retaining two shares for himself and dividing the rest among his sons, will be at liberty, when he is reduced to indigence, to resume what he may

have so divided, or, where the sons are reduced to indigence, he is to give again to them a portion out of the shares reserved for himself.

VIII. Where the father, even where he is old, chooses to render all, inclusive of himself, partakers of *equal* portions, he will take on account of each of his wives a share equal to that taken by himself. This rule affords reason to infer that shares on account of wives are not to be taken by the father, where, at a partition made by him with his sons, he reserves *two* shares for himself.

IX. Where, during the life-time of the father, sons make the partition, they are to make both their parents partakers of equal shares with them. (Paragraphs 3 and 41).

X. Where a son, from ability to earn wealth, does not wish for his share of the paternal estate, the father is to separate him from himself by allowing so much of his (son's) portion as he is willing to accept.

CHAPTER II.

SECTION II.

PARTITION AFTER THE FATHER'S DECEASE.

Harita's text as to how partition is to be made on the death of the father.

1. Harita, referring to a father, declares: "If he be dead, the partition of inheritance should be made equally."

Exposition of the above passage.

2. Where the father is dead, the partition of the family estate which the brothers may make, must be made equally only.

Text of Paithînasi on the subject.

3. Paithînasi, too, "When the paternal inheritance is to be divided, the shares shall be equal among the brothers."

Exposition of the above passage.

4. "Paternal inheritance" means wealth forming the subject of inheritance. By the plural of the word "brother" being used in the above text, it cannot be objected to that where the brothers are of dual(1) number, there could be no partition, the term "brothers" being used in the text simply to denote the heirs to a common property.

Partition does not take place where there is but one heir. Text of Devala.

5. Devala, therefore, negatives partition where the heir to the family property is but one. "Heritage is not divisible where there is but one (heir) of the same class."

The object of the use of certain expression in the above passage.

6. The words "of the same class," are used in the text, in order to shew that, in some countries, partition of heritage does not take place where brothers of both equal and unequal classes exist.

(1). According to Sanskrit Grammar, nouns have three numbers: singular, dual, and plural.

Text of Menu.

7. Accordingly, Menu : "The son of a Brahmana, a Kshatriya, or a Vaiçya, by a woman of the Çudra or servile class, shall not share the inheritance."

Sons of the classes not being Cudra take the heritage to the exclusion of the son of a Cudra woman.

8. The principle inculcated by this text is that, although there may be several brothers of the Çudra and other classes, the son of an unmarried(1) Çudra is not entitled to heritage. In such a case, the sons of the other classes alone (that is, of the classes not being Çudra) take the whole estate.(2)

A qualified brother will take charge of the estate where the others are disqualified. Text of Sangrahakara.

9. Likewise, even where there are several brothers of the same class, one alone will take the whole estate where the others are under disability to participate in the same. Accordingly, Sangrahakara : "The whole estate will be taken by the eldest where the younger brothers are disqualified, and by the middlemost(3) or the youngest,(3) where the eldest is disqualified."

Objector's argument.

10. The objector here says that "The heritage is not divisible even where the several brothers of the same class are without disqualification, for, it has been ordained by Menu, 'The

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(1). It appears to me that the adjective "unmarried" has been used before the word "Cudra," because, marriage in one of the *approved* forms does not take place between one belonging to any of the three superior classes and a Cudra woman, though the male issue which the Cudra woman bears to such a person is ordinarily called the *brother* of his other sons by women of superior classes. Cudra in Sanskrit is a woman of the Cudra tribe, but the wife of a Cudra is termed Cudri.

(2). The illegitimate son of a Cudra by a concubine, not being a female slave, is entitled to maintenance according to Hindu Law. See Muttusamy agavira Yettappa Naiker *v.* Venkatasubah Yettia—II M. H. C. R. 293 ; see also the decisions of the High Court in Pandya Talavar *v.* Puli Talavar—I M. H. C. R. 478, and Kulanday Nachiar *v.* Kamany Ammal and another in R. A. No. 86 of 1865, decided on the 17th May 1866.

(3). Here the word "middle-most" intends the next after the eldest, and those born after him are all comprehended under the term "youngest," Crikrishna—Jim. Vah. chap. ii, para. 37—Note.

eldest brother alone shall take the patrimony entire and the rest shall live under him as under their father.' "It cannot be said," the objector goes on, "that the above text simply recommends the common abode of brothers, for, there is for this purpose a separate text of Menu 'Either let them thus live together.'"

Reply.

11. Reply. This is true, but the text "Either let them thus live together" was introduced in order to commend the common abode of brothers of *discretion*. Whereas, the text "The eldest brother alone shall take the patrimony entire, and so forth," is intended to show that where younger brothers have not attained majority, common abode in the manner therein indicated is imperative until they attain their full age. This text therefore does not altogether negative partition of heritage among brothers of the same class. There is thus no contradiction.

Text of Nareda as to one of the brothers taking charge of the estate where the others are under disability.

12. The text of Nareda: "Let the eldest brother, of his free will, support the rest like a father or let a younger brother who is capable, do so. The continuance of the family depends on ability," is applicable to a case where all the other brothers are under disability.

Text of Gautama quoted and confuted.

13. The text of Gautama: "Or the whole may go to the first-born and he may support the rest as a father," cannot be said to bear an import similar to that of Menu, para. 10, for, the disjunctive particle "or" used in the text, seems to indicate, as an alternative, the taking of heritage by all such younger brothers as are possessed of discretion.(1) Not only that this text does not really bear an import similar to that of

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(1). Whereas, the text of Menu contains no such alternative. It absolutely provides, as above shewn, that the eldest brother alone shall take the patrimony entire during the minority of the other brothers.

Menu, but it is also directly opposed(1) to Çruti. It is hence to be discarded.

Text of A'pastamba quoted to show that, not the eldest alone, but all the sons are heirs.

14. A'pastamba, accordingly: "Some hold that the eldest is heir, but this is contrary to law; it being recorded in Çruti that 'Menu distributed the heritage among his sons' (without distinction)."

Exposition of the above text.

15. The meaning of the above is that some "A'cháreyas" or priests say that, among brothers, the eldest alone takes the patrimony, but this doctrine is directly opposed to Çruti; it being without qualification laid down in that portion of the Veda denominated "Taittiriya(2) Brahmanum," that "Menu distributed his heritage among his sons."

Opinion of A'pastamba, that all virtuous sons are entitled to shares.

16. The same author (A'pastamba) then expresses his own opinion. "All (sons) that are virtuous are entitled to shares." The term "sons" is understood after the term "all in the above passage.

Text of Brahaspati on the same subject.

17. Brahaspati, too: "Sons inherit the paternal estate; the shares of all are equal." "Shares" here means the shares of both assets and debts.

Text of Yájnavalkya as to assets and debts being divided.

Explanation of the term "debts" used in the text.

18. Accordingly, Yájñavalkya: "Let sons divide equally the assets and the debts after (the demise of) their parents." The debts referred to in this passage are debts contracted by the father, for, as respects debts not contracted by the father, the rule is that they should be discharged at the very time of partition.

(1). Because it permits the whole estate being taken by the first-born alone even where the other brothers are of competent age.

(2). This is a portion of the Vedas. It is included in the "Yajur Veda" and takes its name from "tittiri," a partridge. "The text of this Veda being disgorged by Yájnavalkya in a tangible form, and picked up by the rest of Vaisampayána's disciples, who for the purpose assumed the shape of partridges"—(Wilson in his Dictionary on the word "taittiriya").

Text of Kátyáyana as to what debts are to be discharged at the time of partition.

19. Accordingly, Kátyáyana :—" A debt contracted by a brother, a paternal uncle,or a mother for the support of the family, must be fully discharged by the co-heirs when partition is made."(1)

Text of Nareda as to paying off the debts of the father at the time of partition.

20. Nareda says that the debts contracted by the father should also be paid at the time of partition. His passage is " What remains in the paternal estate after paying off the debts of the father, shall be divided among the brothers. Otherwise, the father continues a debtor."(2)

Text of Gautama as to funeral expenses being defrayed out of paternal estate.

21. Gautama :—" Out of the paternal estate, ' Nava Çradha'(3) or the obsequies of the deceased must be performed, the heirs being assembled together."

Text of Sangrahakara as to partition being made after the performance of the funeral rites of the deceased.

22. Sangrahakara, too : " Partition subsequent to the demise of the father is to be made after the performance of Ekoddishta."(4)

When the text of Nareda is to be followed and when that of Yájnavalkya.

23. From all the above texts, it is to be understood that if the paternal wealth be such as to leave a surplus after defraying the expenses of " Nava Çradha" and discharging the debts contracted by the father, &c., the course prescribed by Nareda, para. 20, is to be observed. If not, the direction contained in the text of Yájñavalkya, para. 18, is to be followed.

24. Even in respect of debts contracted by the father,

(1). As to debts incurred by a manager and the distinction when one of the members in a minor; see 6 Moo. I A. C. 393, and I M. H. C. R. 398.

(2). This passage is translated differently in II Digest, page 282.

(3). Nava Cradha means the first series of Cradhas collectively, or funeral offerings on the 1st, 3rd, 5th, 7th, 9th, and 11th days after a person's demise.

(4). This is a rite performed in honour of the deceased *alone* in contradistinction to Parvana or double rite. It takes place at the funeral repast of the eleventh day from the decease—vide Dattaka Mimamsa, sec. iv. para. 72; section vi. para. 35—Notes.

some in their nature are such as should not be discharged at the time of partition out of the paternal estate. It is imperative that they should be divided. Accordingly, Kátyáyana: "The donation for religious purposes, an affectionate gift (Priti Dattam), and a loan the discharge of which was directed(1) by the father himself, shall, when they are brought to light, be divided. They are not to be paid out of the patrimony.(2)

Certain debts of the father are to be divided at the time of partition. Text of Kátyáyana.

25. The meaning of this text is that the following three kinds of debts, when they are brought to light, that is, when they are discovered, are to be divided only.

Exposition of the above passage.

1stly. That which was intended for religious purposes.

2ndly. That which was promised by the father as a friendly gift.

3rdly. That debt which the father himself has directed that the sons should discharge.

26. If a son, from ability to earn wealth by his own lucrative occupation, does not wish for a share of the wealth left by the father, something must necessarily be given to him for the

Some trifle must be given to a son not desiring a share.

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(1). It seems to me that the direction herein contemplated must be to the effect that the loan ought to be discharged by sons out of their own acquisition and not out of the patrimony. Otherwise, the text will be found to be inconsistent with the text of Nareda cited in para. 20. It has, however, been held in Madras that a son is liable for his father's debts only to the extent of the property inherited by him from the latter—S. A. No. 12 of 1851, Mad. S. D. 1851, p. 13.

(2). This text is translated as follows in V. M. chap. iv. sec. vi. para. 2 :— "What has been given for religious purposes, and through affection, and the debt which has been added by himself, that (and) the visible (estate) let them divide ; [any other debt] is not to be given out of the paternal estate."

In II Digest, 481, the version of the above text appears as follows :—

" *What has been given away* for *the* religious purposes *of one individual,* a friendly gift, and a *loan* made on his sole account, shall, if discovered, become part of his allotment; *for,* the property cannot be aliened *by one parcener on his separate account.*"

The present translation is however made conformably to the interpretation of the author of the Smruti Chandrika.

purpose of obviating any future cavil on the part of his descendants, on account of his share. Menu accordingly says, "If any one of the brethren has a competence from his own occupation and desires not the property, he may be debarred from his share, the rest giving him some trifle in lieu of a maintenance."

Text of Menu.

27. Nareda, referring to a particular brother, states that he shall be allowed by the rest of the brethren, grain, &c. in excess of his share, on the principle that reward should increase in proportion to exertions. "He who, being actively employed in the affairs of the family, performed the business thereof, shall be supplied(1) by his brethren with food, raiment, and beasts of burden."

A brother actively employed in the affairs of the family to be renumerated. Text of Nareda.

28. Thus, equal partition after the father's decease has been explained.

End.

SUMMARY (BY THE TRANSLATOR.)

I. Partition by brothers on the demise of their father is to be made equally only.

II. According to the practice prevailing in some countries, where there may be several brothers of the Çudra and other classes, the sons of the other classes take the whole estate to the exclusion of the son of the Çudra class.

III. The eldest or any other brother duly qualified must support the other brothers incapacitated by minority or other causes.

IV. Even where all the brothers are of competent age and duly qualified, they may live together, instead of dividing the family property among them.

V. Debts and funeral expenses are to be paid out of the paternal estate.

VI. Where the paternal wealth is such as to leave a surplus after defraying the funeral expenses and discharging

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(1). This, I suppose, must be at the time of partition.

the debts of the father, the debts are to be at once paid before making the partition. Where, on the contrary, the estate is small, the assets and the father's debts are both to be divided.

VII. As for family debts not contracted by the father, they must be fully discharged at the time of partition.

VIII. A donation for a religious purpose, an affectionate gift, and a loan, the discharge of which was directed by the father, must be divided and not paid out of the patrimony.

IX. Partition after father's demise is not to be made before the performance of his funeral rites called "Ekoddishta."

X. Some trifle must be given to a son, who, from possessing a competence, needs not a share.

XI. A brother actively employed in managing the affairs of the family is to be remunerated by grain, &c.

CHAPTER III.

UNEQUAL PARTITION.

Text of Brahaspati as to a greater portion being given to a son endowed with science and good qualities.

1. Brahaspati:—"All sons shall share equally the wealth of the father, but of those, he who is endowed with science and good qualities is entitled to receive a greater portion."(1)

Exposition of the above text.

2. If sons (outcasts excepted) entitled to inherit the father's estate, be equal in the possession or the destitution of learning or the like, they shall all have equal shares. If, on the contrary, they be unequal in point of learning or the like, such of them as are endowed with learning or the like, will be entitled to receive a great portion either by way of deduction or unequal distribution.

Text of Kátyáyana allowing greater share to a virtuous son.

3. Kátyáyana, however, says that a title to receive a greater portion of the inheritance is created in one, not by his being more learned, but by his being more virtuous than the rest. "The learned should award superiority of share in proportion to the likelihood of the wealth acquired in partition being devoted to the performance of religious rites."

The above text applicable to cases of considerable wealth.

4. This text must, however, be understood to apply to cases where the wealth is considerable.

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(1). As in wealth, so in debts also a greater portion is to be allowed to one endowed with science and good qualities.—chap. xiv. para. 3 of this treatise.

5. Hence, Menu :—" Among brothers equally skilled in performing their several duties, there is no deduction of the best in ten,(1) but some trifle should be given to the eldest as a mark of veneration."

Text of Menu as to the course to be pursued where the estate is small.

6. "Deduction" is that which is deducted out of the partible estate for the purpose of being given to the eldest, &c. The words "in ten," are used in the text to signify a limited extent of property, sufficient only for maintenance.

Exposition of the above text.

" Their several duties" mean such duties as are observable with reference to the class to which the parties in each case belong.

7. It is hence to be understood that, in the case of brothers all of whom are equally assiduous in the performance of their several duties, even where there should be considerable wealth, there is neither deduction nor the giving of a trifle as a mark of veneration; the performance of duties being equal (among all). But where the estate is limited, and brothers are unequal in learning and the like, although no deduction can be made by reason of the property being sufficient only for maintenance, yet some trifle alone is to be given to the eldest(2) as a mark of veneration. The conclusion therefore is, that deduction is allowed in partition, only among such brothers as are possessed of considerable wealth, and as are unequal in point of learning, and the like.

Conclusions from the above texts of Kátyáyana and Menu.

8. Menu also details the mode of deduction. " The portion deducted for the eldest is the twentieth part of the heritage, together with the best of all the chattels; for the middle-

Text of Menu detailing the mode of deduction.

(1). "Best in ten" signifies the most excellent chattel among ten chattels.

(2). With reference to the construction put upon the word "eldest" in para. 9 of this chapter, I think the term "eldest" here, too, must mean a brother both senior in birth and superior to all in learning, and the like.

most(1) half of that; and for the youngest, a quarter of it."

9. "Eldest" is that brother, who is both senior in birth and superior to all in learning and the like. He is to get a twentieth part, namely, one part in twenty out of the partible estate, as also one chattel the best of all. Then, half of that, namely, one part in forty, out of the same estate with one chattel of a middle-sort, is to be set apart for one, who is middlemost both in birth and learning, and the like. And a quarter of it, *i.e.* one part in eighty out of the same estate, together with an inferior chattel, is to be assigned to the youngest, *i.e.* the last in birth, as also in learning and the like.

Exposition of the above text.

10. Menu also prescribes the mode of dividing the residue. "If a deduction be thus made, let equal shares of the residue be allotted."

How the residue is to be divided. Text of Menu.

11. The meaning is, that the property remaining after deduction is to be divided equally.

Exposition of the above text.

12. Or, if in the same case, (that is, in the case in which deductions have been contemplated above), unequal division should be made, Menu says that there could be no deduction. "But if there be no deduction, the shares are to be distributed in this manner, let the eldest have an additional share, and the next born a share and a half, and the younger sons each a share : thus is the law settled."

Where no deduction is made, unequal distribution may be effected. Text of Menu.

13. By saying "let the eldest have an additional share," it is meant that he is to have two shares ; it being declared by Gautama, "Or the first-born shall have two shares." "First-born" means one who is first also in learning, and the like.

Exposition of the above text.

Passage of Gautama.

(1). Here the word middle-most intends the next after the eldest, and those born after him are all comprehended under the term youngest—Crikrishna, J. V. chap. ii. para. 37—Note.

14. Hence, Brahaspati :—" The eldest (or he who is pre-eminent) by birth, science and virtuous qualities, shall receive two shares of the heritage."

Passage of Brahaspati on the same subject.

15. It would thus appear that it is not the seniority of birth alone that entitles one to a greater share by way of deduction or unequal distribution, but also superiority in point of learning and the like.

Conclusion from the above texts of Menu, Gautama, and Brahaspati.

16. This unequal(1) partition does not, however, prevail in the Kali age. Sangrahakara :—"As the duty of an appointment (to raise up seed to another) and as the slaying of a cow for a victim are disused at the present day, so is now partition with deductions."

Unequal partition does not prevail in Kali age. Text of Sangrahakara.

17. The words "at the present day" and "now" are both used in the above text in order to indicate the present Kali age.

Explanation of certain terms in the above text.

18. Hence in the Purana, " Second marriage of a married woman, primogeniture, slaying of a cow, procreation of offspring by a brother, and bearing an earthen pot called 'Kamundaloo,'(2) these five are forbidden in the Kali age."

A passage from Purana quoted.

19. Primogeniture] Superiority of share on account of eminence in birth and learning. Slaying of a cow] Slaying in a sacrifice. Bearing an earthen pot called "Kamundaloo"] Bearing an earthen pot called "Kamundaloo" by a " Grahasta" or housekeeper.

Exposition of the above passage.

20. Daraiswara, too, says as follows on the same subject; " The text 'the portion deducted for the eldest is the twentieth part of the heritage,' is not commented upon ; it being greatly

Daraiswara's text on the same subject.

(1). Here the term " unequal partition" includes also a partition with deductions.

(2). This is an earthen pot generally used by a " Sanniasi" or ascetic. It is a symbol of the fourth order.

abhorred by the world." Add here the words "in the Kali age," for, in Dwapara(1) and other ages, it was capable of being practised, and had not therefore been greatly abhorred.

Viswarupa's passage objected to.

21. Viswarupa says: "As the injunction 'Offer to a venerable priest a bull or a large goat,' is unfit of practical observance from its being *opposed* to the usage of the Great (Çistáchára); so is partition with deductions." This, however, is not right, for, where Smruti (law) and the usage of the Great are opposed to each other on any particular point, the inferiority in point of authority attaches only to the usage of the Great. This is deducible from the text of Vasishtha. "An act is legal where it is sanctioned by Scripture and Law. In their absence, the usage of the Great is the authority."

Reasons for the objection.

22. It is true that the offering of a bull, &c., is an act which is not supported by the usage of the Great. But, simply from there being no such usage of the Great, it is improper to say that it is *opposed* to the usage. It must only be said, as Çrikara has done, that "the injunction 'Offer to a venerable priest a bull or a large goat' is not to be observed, such *not being* the usage of the Great." But it has not been so said (by Viswarupa).

Text of Yájnavalkya objected to.

23. What Vijñaneçvara says: "True this unequal partition is found in the sacred ordinances, but it must not be practised because it is abhorred by the world,"(2) is not also proper, for, this too is not founded in truth. The people do not, in reality, abhor partitions attended with deductions or unequal distributions.

Reasons for the objection.

On the contrary, they seem to be anxious to allow a greater portion to the eldest and other brothers if endowed with science, good qualities, and virtuous acts.

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(1). According to Hindoo Casters, there are four Yugás or ages: Krita, Traita, Dwapara, and Kali. The present Yugá, or age, is called "Kali."

(2). Mit. chap. i. sec. iii. para. 4.

Reasons for not treating in detail the subject of deductions, &c.

24. The compilers of Laws, "Çamboo," "Çrikara," "Devaswami," and the like, have published volumes even in the present age on the subject of deductions, &c., under the impression that they are in some instances allowed by the usage of the Great. The learned have, however, decided, with reference to religious books, Puranas, &c., that no such usage of the Great exists in the Kali age. We therefore thought that to treat the subject in detail would only swell the work uselessly, and accordingly gave but a hint of the matter.

SUMMARY (BY THE TRANSLATOR).

I. Unequal partition is of two kinds, partition with deductions and unequal distribution.

II. Partition with deductions is that partition in which one part in twenty, together with the best of all the chattels is deducted out of the partible estate for the eldest by birth, science, and virtuous qualities, half of that for the middle-most, and a quarter of it for the youngest, and the residue is divided in equal shares among all the brothers.

III. Unequal distribution is that partition in which two shares are given to the eldest by birth, science and virtuous qualities, a share and a half to the middle-most, and a share to each of the younger brothers.

IV. Unequal distribution takes place where partition with deductions is not resorted to.

V. Neither partition with deductions nor unequal distribution takes place where the estate is considerable *and* the brothers are all alike in learning and virtuous qualities.

VI. Where, however, they are unequal in learning and the like, partition with deductions or unequal distribution takes place where the estate is considerable, but, where the estate is small, some trifle alone is given to him who is first in birth as also in learning and the like as a mark of veneration.

VII. Unequal partition, whether of the nature of partition with deductions, or of unequal distribution, does not prevail in the Kali or present age.

CHAPTER IV.

SHARES ALLOTTED TO PROVIDE FOR WIDOWS AND FOR THE NUPTIALS OF UNMARRIED DAUGHTERS. THE INITIATION OF UNINITIATED BROTHERS DEFRAYED OUT OF THE JOINT FUNDS.*

Where the mother is pregnant, the partition should be postponed until after the delivery. Text of Vasishtha.

1. Vasishtha:—"Partition of heritage (takes place) among brothers (having waited) until the delivery of such of the women as are childless, (but pregnant)."

Exposition of the above text.

2. The word "women" in the text refers to the widows of the father. The word "childless" means having child in the womb. "Until the delivery" means until the child is brought forth. In such a case, partition among brothers who have continued to live together does not take place till after the birth of the issue and its sex is known. The general(1) rule of making partition immediately after the obsequies of the deceased are performed, does not apply to this case.

Objector points out the most natural construction of the above passage of Vasishtha.

3. The objector here says that the wording of the passage (para. 1) above quoted, admits of the most natural construction that partition of heritage takes place among brothers and childless widows of the father, after the performance of his obsequies. He asks why should this construction be overlooked? (2)

* The partition contemplated throughout this chapter is that partition which takes place *after* the father's decease.

(1). This rule is to be found in chap. ii. sec. ii. para. 22 of this treatise.

(2). See on this subject note to Mit. chap. i. sec. vi. para. 12.

4. Reply. It is overlooked because the words "Until the delivery of such of the women as are childless," convey apparently a meaning inconsistent with such a construction, and because females are incompetent to inherit, and consequently no partition of heritage could take place among them. Accordingly Baudháyana, commencing with "A woman is entitled," proceeds "not to the heritage, for, it is stated in Çruti that females and persons deficient in an organ of sense or member are deemed incompetent to inherit."

The above construction rejected from its containing a contradiction and from widows not being entitled to participate as heirs.

Passage of Baudháyana on the subject of the incompetency of females to inherit.

The particle "Hi" used in the above passage conveys the sense of "for" or "because."

5. The conclusion hence is that because it is stated in the Çruti that persons deficient in an organ of sense or member, *i. e.* persons who have lost it by reason of disease, &c., as well as females, are deemed incompetent to inherit, therefore females are not entitled to heritage ;(1) that is, to wealth descending from the owner and admitting of partition.

Conclusion from the above passage of Baudháyana.

6. By saying that persons deficient in an organ of sense or member and females are *deemed* incompetent to inherit, it is to be understood that the substance of the Veda called Taittiriyam(2) to the effect that females and persons wanting in an organ of sense or member are incompetent to inherit, has been recited.

The above passage is a recital of the substance of the Veda called "Taittiriyam."

7. Here, however, an objection arises. If females are incompetent to inherit, how then did Yájñavalkya say "Of heirs divid-

Objector's argument.

(1). For exceptions to this rule, see chap. xi. sec. i. para. 56, and sec. v. para. 3 of this treatise.

(2). See note to chap. ii. sec. ii. para. 15 of this treatise for an explanation of this term.

ing after the death of the father, let the mother also take an equal share"?[1] How did Veyasa say: "Even childless wives of the father are pronounced equal sharers, and so also are all the paternal grandmothers: they are declared equal to mothers:" and Vishnu, too, "Mothers receive allotments according to the shares of sons, and so do unmarried daughters"? These passages providing shares for mothers and the like must be incorrect, should the females be incompetent to inherit.

Reply.

8. The reply is, they are fully correct. With regard to those that are incompetent to inherit, passages directing the allotment to them of heritage (Dáya) may be incorrect, but not those which simply direct portions (Amçam) to be given to them. Amçam signifies a portion and not (a share in) the heritage (Dáya). We find it inserted (in law books) that a portion (Amçam) may be given even out of property belonging *in common* to several.

Difference between "Amçam" and "Dáya," explained

Mother entitled not to "Dáya" but to "Amçam." Reasons for the above.

9. Although the mother is disentitled to a partition of the *heritage* from want of property in the same, yet, since she possesses an interest[2] in the partible wealth by reason of her being the widow of the deceased father, Yájñavalkya and others must be understood to have permitted her, in compromise of such interest, to take wealth sufficient for her needs by way of a portion.

Mitákshará's definition of the term "heritage," objected to.

10. Mitákshará[3] defines the term heritage (Dáya) to be "wealth which becomes the property of another solely by reason of relation to the owner." If this definition were correct, the widow's share, from the term "heritage" applying to it, according to the opinion of

(1). As for the portion of a mother at a partition taking place *during life-time of the father*, see chap. ii. sec. i. para. 38.

(2). Vide chap. ix. sec. ii. para. xiv. and chap. xi. sec. i. para. 19, of the treatise.

(3). Mit. chap. i. sec. i. para. 2.

Mitákshara, would become always divisible. But "heritage," the inherent quality of which is *partibility*, does not apply to the case of the wealth of a husband or wife in the world. Under the definition, however, of "heritage," as given by Mitákshara, the term becomes applicable also to that (portion of the) wealth of the husband, of which the widow(1) becomes possessed, she acquiring it solely by reason of her relationship to the husband. But this is opposed to the Çruti,(2) which declares females incompetent to inherit.

Author's definition of the term "heritage."

11. Our opinion therefore is, that the term heritage signifies only that wealth *which is capable of partition* and which becomes the property of another solely by reason of relation to the owner. The wealth which a widow takes is not heritage, since it is not capable of partition. Accordingly, a Stridhana derived from the husband is always impartible ;(3) division of property between husband and wife being never seen in the world, and Harita having declared "Partition does not take place between a wife and her lord." It must therefore be understood that a mother is entitled not to a partition of heritage in adjustment of a pre-existent right, but simply to take so much of the wealth as she stands in need of.

The wealth which a widow takes is not heritage.

Reason for the same.

Text of Harita.

Conclusion.

12. Hence, such a mother alone as is destitute of wealth,

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(1). It must be remembered that the term "widow" refers here to a widow having sons and not to a sonless widow.

(2). In a subsequent part of this work, this Cruti is expressly declared not to be applicable to a widow, daughter, or mother. But there, the widow referred to is apparently a *sonless* widow. See chap. xi. sec. i. para. 56, and sec. v. para. 3 of this treatise.

(3). See chap. ix. sec. ii. para. 26 of this treatise.

and not a mother generally, is declared in Smruti or law to be entitled to receive a share. Smruti :—" A mother, if she be dowerless, shall, in a partition by sons, take an equal share."

An unprovided mother alone entitled to receive a share.

A text from Smruti quoted.

13. The meaning is that, during partition by sons, subsequent to the decease of the father, the mother will take an equal share, only where she has no dower, *i.e.* her own separate property.(1)

Exposition of the above passage.

14. The word "mother" includes a step-mother, it being said by Vishnu, "*Mothers* receive allotments according to the shares of sons."

Mother, includes a step-mother.

Text of Vishnu.

15. By the qualifying terms "if she be dowerless," made use of in the text, para. 12, it is inferrible that where a mother, by means of her own separate property, is able to maintain herself and perform such religious duties (requiring for their accomplishment the use of wealth) as are observable by her, she can take no share out of her husband's property. If the separate property of a mother be insufficient for the above purposes, then she, notwithstanding her possession of such property, is to take a share, which, however, is not to be equal to that of a son, but less than that, proportionate to her wants.

Inferences deducible from a certain expression in the text quoted in para. 12.

A mother possessing sufficient separate property is to take no share out of her husband's wealth.

What share a mother is to take out of her husband's wealth, where her separate property is insufficient.

16. Accordingly, where the estate forming the subject of partition is large, the mother, though destitute of separate property, is not to take an equal share, but such an inferior share as may be sufficient to meet her own wants.

What share a mother, though destitute of separate property, is to take out of her husband's wealth where the estate is large.

(1). Separate property] Peculiar property of a woman (Stridhana). Vide chap. ix. sec. i. of this treatise.

The condition imposed by the expression "If she be dowerless" shews that the taking of a share by the mother is on account of her necessity and not in right of inheritance, as is the case with brothers.

A mother is debarred from claiming more than the share of a son even where she needs it.

17. By a mother taking not a fixed share but only so much as she stands in need of, the word "equal" used in the text, para. 12, is not rendered useless; for, the word serves to debar her, where the partible estate is small, from claiming more than the share of a son, on the score of its being needed by her.

Daughters receive allotments not in right of inheritance but on account of marriage.

18. Although Vishnu declares (para. 7) that daughters too are entitled to allotments according to the shares of sons, still it must be understood that this is not in right of inheritance, as in the case of brothers, but simply for the purpose of defraying the expenses of their marriages.

The reasons are,—

Reasons for the same.

1stly. Because they possess no right of inheritance in respect of a property, which though they have acquired an interest in it by birth,(1) has not become their independent property, (notwithstanding the demise of the father) from its being partible not among them, (but among the sons only).

2ndly. Because the adjective "unmarried" is used in the text of Vishnu, para. 7, before the word "daughters."

Text of Vishnu, declaring daughters entitled to a share equal to that of a son, is applicable to a case where the estate is small.

19. Since it is stated that a daughter takes a share not in right of inheritance but for the purpose of nuptials, it follows that the above text of Vishnu is applicable to a case where the estate to be divided is not considerable.

20. Hence, Devala:—"To unmarried daughters, a nup-

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(1). Vide chap. ix. sec. iii. para. 11 of this treatise.

tial portion must be given out of the estate of the father."

Text of Devala on the same subject.

"Nuptial portion" means fund required for the expense of marriage.

Text of Yájnavalkya declaring a quarter share to be allowed to the sister from the portion of every brother.

21. Yájñavalkya, after premising "are to be initiated,"(1) says, "Sisters with a fourth part of (a brother's) own share being given to them as an allotment."

22. Whatever is the share of one son, one-fourth of such

Exposition of the above text.

shares is to be given to each sister, and thus brothers are to get sisters married.

Passage from another Smruti on the same subject, quoted.

23. In another Smruti, too, "Unmarried sisters take their one-fourth share of the wealth from brothers."

24. Each unmarried sister takes their, that is, during

Exposition of the above passage.

partition after the father's decease, wealth equivalent to one-fourth share from brothers.

The passages quoted in paras. 21 and 23, applicable to a case where the estate is large.

25. The above passages are applicable to a case where the estate is not inconsiderable.

Text of Kátyáyana directing the allotment of one-fourth share to unmarried daughters and three shares for the sons, where the estate is not small.

26. Accordingly, Kátyáyana :— "For the unmarried daughters a quarter is allowed and three parts for the sons, but where the property is small,(2) the portion is considered to be equal."(3)

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(1). Initiation in this instance signifies marriage: since the previous ceremonies are not performed for females, but only for male children.

(2). If the property be not sufficient to defray the nuptials of a daughter with a fourth part of the amount receivable by a son, the property is said to be small—Jim. Vah. chap. iii. sec. ii. para. 36, Note.

(3). The portion is considered to be equal] The translation of this portion of the text in Jim. Vah. chap. iii. sec. ii. para. 35, runs thus :—"But the right of the owner (to exercise discretion) is admitted." In II Digest, page 297, the version of the same portion appears thus:—"A daughter is considered as having a right to *a sufficient portion without determining the rate.*"

27. Here it must be understood that one part is to be given to *each* of the unmarried daughters and three parts to *each* of the sons.

Explanation of the above text.

Construction to be put upon the fourth quarter of the above text which declares the portion of an unmarried daughter to be equal, where the estate is small.

28. The meaning of the fourth or last portion(1) of the above text, para. 26, is that where the estate is small, the share of *each* sister is considered by Vishnu and others as being equal to that of a son.

The same principle applicable also to a mother taking an equal share.

29. The principle of the passage " Where the property is small the portion is considered to be equal," is by parity of reasoning, applicable also to the case contemplated by the text, para. 7, " Mothers receive allotments according to the shares of sons."

Where the estate is not small, the share is but one-fourth.

30. Hence, it is understood by implication that where the estate is *not* small, the share is but one-fourth.

Brothers get three shares where they and sisters are of equal number. But where sisters are of less number, brothers get something more.

31. The phrase " Three parts for sons" (occurring in the text cited in para. 26) refers to cases where brothers and sisters are of equal number.(2) Where sisters are of less number, the sons are to have, not three parts, but something more.(3)

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(1). This is the portion which contains the following sentence, " Where the property is small, the portion is considered to be equal." Vide para. 26.

(2). This is because if there be one brother and four sisters, nothing will remain for the brother, if a quarter were to be given by him to each sister. If there be a greater number of sisters, the allotment by a brother of a quarter to each is impossible. Or, if there be one sister and many brothers, the sister would get a greater allotment than a brother, if a quarter were to be given to her by each of her brothers, and this is inconsistent with the texts of law, which, under no circumstance, allow a sister more than the equal portion of a brother.

(3). Supposing there are two sisters and four brothers and the family estate is worth 1,600 Rupees, two hundred Rupees will be given to the two

Text of Menu directing sons to contribute a fourth part from their respective allotments for maiden sisters.

32. Menu: "To the maiden sisters, let their brothers give portions out of their own allotments respectively: let each give a fourth part of his own distinct share,(1) and they who refuse to give it shall be degraded."(2)

Text of Menu applicable to a case where the number of maiden sisters is greater than that of brothers.

33. From the words "own respectively" used in the text, the meaning fairly deducible is that whatever may be the shares of the brothers, one-fourth of all such shares is to be given by the brothers to maiden sisters. This text, however, having reference to a case where the number of maiden sisters is greater, is not at variance with the text of the ancient Smruti.(3)

Text of Menu shewn to be consistent with ancient Smruti.

34. It is not however necessary in this instance that the brothers, out of their respective shares, should *each* give one-fourth share to *each* of the sisters. How, in such a case, can this text be considered as inconsistent with the ancient one? The inconsistency is totally removed by one-fourth share being allowed (as is inferrible from the text of Menu) to all the daughters *in common* and not to each of them separately.(4)

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sisters at the rate of 100 Rupees each, being one-fourth of the portion (400 Rupees) of each of the four brothers in the estate, and the remaining 1,400 Rupees will be taken by the brothers at the rate of Rupees 350 each, which is more than three-fourths of their respective portions.

(1). Let each give a fourth part of his own distinct share] This part of the text is understood differently by Mitákshara—chap. i. sec. vii. para. 9.

(2). As to the different reading of this passage, see note to Jim. Vah. chap. iii. sec. ii. para. 36, and note to Mit. chap. i. sec. vii. para. 9.

(3). This I suppose is the Smruti, on the strength of which, the author declares that where sisters are of less number, the sons are to have not three parts, but something more.

(4). Thus, where there are two brothers and four maiden sisters, and the family estate is worth Rs. 1,600, one-fourth of the shares of these two brothers in the estate, or in other words, 400 Rs. (which constitutes one-fourth portion of the whole estate) will, under the text of Menu, cited in para. 32, be given

Maiden daughters to divide equally among them what was allotted to them.

35. What was given, the maiden daughters are to divide and take in equal shares among them.

Text of Vishnu.

To what case the above text is applicable.

36. The text of Vishnu: "The initiations of unmarried daughters are to be defrayed in proportion to his own wealth" is applicable either to a case where no partition of heritage takes place from there being an only son, or to a case where brothers live in union.

The word "daughters" used in the above text includes also unmarried sons.

37. The use of the word "daughters" in the foregoing text is also intended to include the case of the unmarried *sons* of the father. Hence, Vyasa:—"Brothers whose investiture and other ceremonies have not been performed, are to be initiated in due time from the paternal wealth *alone* by brothers, whose sacraments have already been completed. Unmarried sisters are also to be initiated by their elder brothers according to law."

Text of Vyasa enjoining the initiation of brothers to be completed out of the common funds.

Text of Brahaspati on the subject.

38. Brahaspati, too:—"For younger brothers whose investiture and other ceremonies have not been performed, their elder brothers shall perform them out of the collected wealth of the father."

Explanation of certain terms in the above text.

39. In this text, "brothers" means brothers whose father is dead. "Whose investiture and other ceremonies have not been performed."] Add to these words the phrase "by the father."

40. Therefore, Nareda:—"For those whose initiatory

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to the four maiden sisters, and the remaining three-fourths will be taken by the two brothers. There is hence no inconsistency between this text and the text of Kátyáyana, cited in para. 26, which, likewise, allows a fourth share to unmarried daughters and three-fourths to sons.

ceremonies (1) have not been regularly performed by the father; those ceremonies must be completed by the brethren out of the patrimony."

Text of Nareda on the same subject.

41. Where, however, there may be no patrimony, the same author adds: "If no wealth of the father exists, the ceremonies of brethren(2) must, without fail, be defrayed by the brothers already initiated, contributing funds out of their own portion."

Where there may be no patrimony, the ceremonies of uninitiated brothers must be performed by those initiated, out of their own funds. Text of Nareda.

(1). Initiatory ceremonies] Samskara; a succession of religious rites commencing on the pregnancy of the mother and terminating with the investiture of the sacerdotal thread or with the return of the student to his family, and finally his marriage. These rites have been detailed in the following note of Mr. Colebrooke, in his translation of the Digest on text 134, chap. iii. book 5: "By these eight ceremonies I understand, 1st, Játakarma; a ceremony ordained, on the birth of a male, before the section of the navel string, and which consists in making him taste clarified butter out of a golden spoon. 2nd, Námakarna; ceremony on giving a name, performed on the tenth day after birth; or on the eleventh, twelfth or even the hundredth and first day. 3rd, Nishkramana; carrying the child out of the house to see the moon, on the third lunar day of the third light fortnight from his birth; or to see the sun in the third or fourth month. 4th, Annapraçana; feeding the child with rice, in the sixth or eighth month, or when he has cut teeth. 5th, Chúdákarana; the ceremony of tonsure, performed in the second or third year after birth. 6th, Upanayana; investiture with the marks of the class, performed in the eighth year from the conception of a Bráhmana; but it may be anticipated in the fifth, or be delayed to the sixteenth year. 7th, Savitrí; ceremony of investiture hallowed by the Gayatrí, which must not be delayed for a Bráhmana, beyond the sixteenth year: it should be performed in the fourth day after the first investiture. 8th, Samavarttana; ceremony on the return of the student from his preceptor's house. The whole number of ceremonies, called "Samskara" as expiating the sinful taint contracted in the mother's womb, and as effecting regeneration, in other words, as perfecting the class of a twice-born man, are ten. To the eight ceremonies now enumerated, must be therefore added the ceremony which precedes conception (Garbhádhána) and marriage, which is the last of these sacraments. Rituals contain other ceremonies, two of which are mentioned in the text and in the preceding note, but these are not essential."

(2). Of brethren] This reading is objected to by Jim. Vah. who reads Bhratrbhih purva samskrtaih "by brothers already initiated" instead of Bhiatrnam purva samskrtaih "of brethren by those who are already initiated" —Jim. Vah. chap. iii. sec. ii. paras. 41 and 42, and Note.

Construction to be put upon the term "ceremonies" in the above text.

42. The ceremonies contemplated by this text commence with Játakarma(1) and end in Upanayana.(2)

Reasons for such a construction.

43. The word "ceremonies" takes here the above limited sense as the text says "Must *without fail* be defrayed," and as marriage, &c. are not ceremonies that must *without fail* be performed; the law permitting the life of a *perpetual* student (Nystika Brahmachari).(3)

In what sense the term "ceremonies" must be understood in the case of daughters.

44. In the case of daughters, however, the word "ceremonies" used in the text, para. 41, denotes marriage, there being no Upanayana for them. (4) If there be no patrimony, the marriage must be performed by the contribution of funds of their brother's own estate, marriage with females taking the place of "Upanayana" with males, and, as such, being indispensable.

An unmarried daughter takes also the trinkets worn by herself and the like. Text of Çankha.

45. At the time of partition, an unmarried daughter takes also other property, such as trinkets worn by herself and the like. Accordingly, Çankha, "When partition of heritage takes place, the unmarried daughter takes the virgin trinkets, nuptial portion, and Stridhana."

Exposition of the above text.

46. When brothers divide the paternal estate, the unmarried daughters take the trinkets worn by themselves, the one-fourth share and the like given for the purpose of marriage, as well as the Stridhana given by the father, and the like.

(1). A ceremony ordained on the birth of a male, before the section of the navel string, and which consists in making him taste clarified butter out of a golden spoon.

(2). Investiture with marks of the class, performed in the eighth year from the conception of a Brahmana—Dattaka Mimansa, sec. 4, para. 23—Note.

(3). Vide note to chap. v. para. 7, for an explanation of this term.

(4). The ceremonies previous to marriage are not performed for females but only for male children—Subodhini. See note to Mit. chap. i. sec. viii. para. 9.

Text of Baudhâyana on the same subject.

47. Baudhâyana, too:—"Daughters shall take the mother's trinkets, hereditary or otherwise."

Explanation of the text.

48. "Hereditary"] Descended to the mother from the line of her mother—"Or otherwise"] Trinkets worn by the mother, gained by any other means. These, the unmarried daughters shall take(1) during partition of the mother's property.

SUMMARY (BY THE TRANSLATOR).

I. Where, at the time of the father's decease, the mother is pregnant, the partition of heritage by brothers should be postponed until after the delivery.

II. A mother or stepmother is entitled not to a partition of heritage in adjustment of a pre-existent right, but simply to take so much of the wealth as she stands in need of.

III. Where, therefore, a mother possesses sufficient Stridhana, she can take no share out of her husband's property. Where Stridhana is insufficient, she takes a share (which, however, is not to be equal to that of a son but less than that) proportionate to her wants.

IV. Where she is utterly destitute of Stridhana, she takes an equal share with the son, provided the estate is small, but if the estate be large, she takes such an inferior share as may be sufficient to meet her own wants.

V. A mother is, under no circumstance, to claim more than the share of a son.

VI. Unmarried daughters receive allotments. They receive not in right of inheritance as in the case of sons, but simply for the purpose of nuptials.

VII. Where the estate is large, one-fourth of a brother's share is allowed to each of the maiden sisters and three-fourths of the same to each of the brothers. But where the estate is small, the maiden sister takes an equal share with the brother.

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(1). See chap. ix. sec. iii. para. 12 of this treatise.

VIII. The rule allowing one-fourth of a share to each of the maiden sisters and three fourths to each of the brothers is applicable only to a case where brothers and sisters are of equal number. Where sisters are of less number, the shares of sons are something more than three-fourths. When the number of maiden sisters is greater, one-fourth of the whole estate is allowed to all of them in common and not to each of them separately, and they divide it in equal shares among them.

IX. Where no partition of heritage takes place from there being an only son or where brothers live in union, the initiations of unmarried sisters are to be defrayed out of the paternal wealth in proportion to such wealth.

X. Likewise, the initiations of unmarried brothers also are to be performed by their elder brothers out of the common wealth of their father.

XI. If no wealth of the father exists, the ceremonies of brothers (commencing with "Játakarma" and ending in "Upanayana") must, without fail, be defrayed by brothers already initiated, contributing funds out of their own acquisitions. Likewise, the marriage of sisters must also be performed by their brothers out of their own estate, where there is no patrimony.

XII. At the time of partition, an unmarried daughter, besides the portion given on account of her marriage, takes also the trinkets worn by herself and the Stridhana given to her by her father, and the like.

XIII. During partition of mother's property, unmarried daughters take trinkets worn by their mother as also those descended to their mother from the line of her mother or otherwise obtained by the mother.

CHAPTER V.

EXCLUSION FROM INHERITANCE.

Devala's enumeration of persons incompetent to inherit.

1. Devala :—"When the father is dead, an impotent* man, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast, and a Lingi (a perpetual student, hermit, sectary, or heretic) are not competent to share the heritage." The meaning is, that the impotent and others are not entitled to inheritance on the death of the father.

Exposition of the text of Devala.

2. Lingi] (1) a perpetual student (Brahmachari), hermit, and the like; also a sectary or heretic, such as "Kshapanaka" or Páçupata. The words "when the father is dead" were used in the text, para. 1, simply to indicate the period of partition. It is not thereby to be supposed that the impotent and others would be entitled to inheritance if a partition were to be made *during the life-time of the father.*

Disqualified persons are to be excluded even when partition takes place during life-time of the father.

3. A'pastamba, in the following passage, declares they are disqualified for inheritance even when partition during the life-time of the father is made. "A living father should distribute the heritage equally among sons, excluding only such as are impotent, mad, degraded, and the like."

A passage of A'pastamba.

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* The impotent man is described as follows by Kátyáyana :—"The man is called impotent, whose urine froths not, whose feces sink in water, and whose virile member is void of erection and of semen." See Jim. Vah. chap. v. para. 8.

(1). This term is understood by Jim. Vah. as signifying a person who has entered into a religious order of which he wears the symbol—Note to Jim. Vah. chap. v. sec. xi.

The particle "Cha" (and the like) used in the text, denotes lepers, idiots, the blind, and so forth. Excluding] Divesting of inheritance.

Explanation of certain terms in the passage.

4. Menu enumerates persons excluded from inheritance. "Impotent persons and outcasts(1) are excluded from a share of the heritage, and so are persons born blind and deaf as well as madmen, idiots(2) and the dumb, and those who have lost a sense (Nirindriyah)."

Menu's enumeration of disqualified persons.

Have lost a sense] Deprived of the power of smell or the like by disease or other cause.(3)

Certain terms in the passage, explained.

5. Nareda, too:—"An enemy to his father, an outcast, an impotent person and one formally expelled (Apapátrika) (4) take no shares of the inheritance eventhough they be legitimate: much less if they be sons of the wife by an appointed kinsman."

Nareda enumerates disqualified persons.

6. "Formally expelled" means formally degraded; Çankha and Likhita having declared "The heritable right of him who has been formally degraded (Apapátri) and his competence to offer oblations of food and libations of water are extinct."(5)

Text of Caukha and Likhita excluding one formally degraded.

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(1). The doctrine of Hindu Law that outcasts are incapable of inheritance, has no bearing upon the case of the members of *new* families which have sprung from persons so degraded. See Tara Chand *v.* Reeb Ram. III M. H. C. R. page 50.

(2). The mental incapacity which disqualifies a Hindu from inheriting on the ground of idiocy is not necessarily utter mental darkness. A person of unsound mind, who has been so from birth, is in point of law an idiot. The reason for disqualifying a Hindu idiot is his unfitness for the ordinary intercourse of life. Terumagal Ammal *v.* Ramasamy Iyengar and another. I M. H. C. R. 214.

(3). Have lost a sense, Nirindriyah] Literally an organ—explained by some a sense, as that of smelling or of sight, &c., but by others a limb, as the hand, foot, and so forth. See note to Jim. Vah. chap. v. para. 7.

(4). Some read "Avapataka" instead of "Apapátrika," but both bear the same interpretation. Vide note to Jim. Vah. chap. v. sec. 13.

(5). This passage is attributed to A'pastamba in the Viramitrodya. Under Act XXI of 1850, however, loss of caste is no ground of exclusion.

Explanation of the term "Apapátri" in the text.

"Apapátri" is one who has been expelled(1) by kinsmen for heinous offences.

Text of Vasishtha excluding from participation those who have assumed another order.

7. Vasishtha, too:—"Those who have assumed another order are excluded from participation." "Another order" means an order different from that of a householder (Grihasta) or married man.

Explanation of the expression "another order" used in the text.

Hence it must not be said that incompetency to inherit attaches to that kind of Brahmachari also who is called (Upakurvana), a temporary(2) student. The words "another order" simply refer to that order, the entering into which incapacitates one for the order of "householder."(3)

Vishnu's enumeration of disqualified persons.

8. Vishnu, also:—"The degraded, the impotent, those that are afflicted with incurable disease, as well as such as have lost an organ (of sense or action) are excluded from inheritance."

Exposition of the above text of Vishnu.

9. By the adjective "incurable" being placed in the text before the term "disease" *alone*, it would appear that persons afflicted with impotence, loss of limb, &c., that are of a *curable* cha-

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(1). Expelled] Deemed unworthy of intercourse. In consequence of offences or degradation from class, water is not drunk in company with him—Chúdamani and Crikrishna.

Formally banished with the ceremony of kicking down a jar of water as described by Yájnavalkya—Achyuta.

Excluded on account of wickedness, by all his kinsmen, from the oblation of food and libation of water—Maheçvara. See Note to Jim. Vah. chap. v. para. 3.

(2). The students (Brahmachari) are of two descriptions, professed or perpetual (Nyshtika), and temporary (Upakurvana). The perpetual student abandons his father and the rest, making a vow of residing for life in his preceptor's family; but a temporary student makes no such vow, but merely attends his preceptor for the purpose of instruction, and is soon married.

(3). In the note to Mit. chap. ii. sec. x. para. 3, the expression "another order" is declared to signify an order of devotion. The orders of devotion are stated to be, first, that of the professed or perpetual student; second, that of the hermit; third, the last order, or that of the ascetic.

racter, are also disqualified(1) for inheritance. Hence it must be understood that such as appear *at the time of division* to have been afflicted with impotence, &c. are excluded from their shares, and that the exclusion is not confined to those only that *are naturally* (that is by birth) impotent or the like.(2)

Kátyáyana specifies others disqualified for inheritance.

10. Kátyáyana :—"The inheritance is not fit to go(3) to the son of a woman married in irregular order, as also to the son of a woman espoused by her kinsman (Sagotra) and to an apostate from a religious order."(4)

Explanation of certain terms in the above text of Kátyáyana.

11. The son of a woman married in irregular order] The son of a woman married in violation of the rules of tribe or birth. The son of a woman espoused by her kinsman] One born of a woman married to her own (Sagotra) kinsman. "An apostate from a religious order" is he who gives up the fourth order once entered into by him. "The inheritance is not fit to go" means that these are not worthy of inheritance.

Menu declares a "Jarajataka" and "Kamaja" to be unworthy of inheritance.

12. Menu, also :—"The son of a woman not duly authorized to beget one as well as one begotten on a woman (already having a son) by the brother of her

(1). This seems to be a harsh doctrine, but I believe that if the defect be removed by medicaments or other means (as penance and atonements) at a period subsequent to partition, the right of participation takes effect. See Mit. chap. ii. sec. x. para. 7.

(2). Balambhatta holds an impotent person to be disqualified for inheritance, whether he be naturally so or by castration. Note to Mit. chap. ii. sec. x. para. 1.

(3). The Ratnakara and Chintamani, read Nariktham téshu karhichit "the inheritance never goes to them," instead of Nariktham téshu chárhati "the inheritance is not fit to go to them." See note to Jim. Vah. chap. v. sec. 14.

(4). In Jim. Vah. chap. v. para. 14, this text is rendered thus :—"The son of a woman married in irregular order, and begotten on her by a kinsman, is unworthy of the inheritance; and so is an apostate from a religious order," and the version is conformable to Jim. Vah's interpretation.

husband, both these are not entitled to inheritance. They are styled respectively "Jarajataka" and "Kamaja."

Explanation of the terms "Jarajataka" and "Kamaja."

13. "Jarajataka" is the son begotten on a woman not duly authorized, by one who did not legally marry her. "Kamaja" is the son begotten on a woman (having already a son by her husband) by a brother of the husband. These two are unworthy of inheritance.

Conclusion from the text of Menu.

14. The conclusion hence is that the son of an adulteress as well as one procreated in violation of the rules of appointment are not entitled to the estate of the "Kshétri" (owner of the soil) or husband of the woman.

Brahaspati excludes the vicious from inheritance.

15. Brahaspati, too:—"Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth."

Exposition of the above passage of Brahaspati.

16. "Destitute of virtue" means destitute of such qualities as would render him fit for acts capable of ensuring to the father benefits, temporal and spiritual.

Continuation of the passage of Brahaspati.

17. The same author continues, "A son redeems his father from debts to superior and inferior beings. Consequently there is no use of one who acts otherwise. What can be done with a cow which neither gives milk nor bears calves? For what purpose was that son born who is neither learned, nor virtuous? A son who is devoid of science, courage and good purposes, who is destitute of devotion and knowledge,(1) and who is wanting in conduct, *i. e.* who observes not immemorial good customs, is similar to urine and excrements.

Exposition of the above passage of Brahaspati.

18. "Debts to superior beings" means debts due to sages, deities, and progenitors. "Debts to inferior beings" means debt contracted with a wealthy man. A son devoid of learning, &c. though an Aurasa (the issue of the breast "Uras") is liable

(1). Some read generosity (dâna) instead of knowledge (Vijnana). See note to Jim. Vah. chap. v. para. 4.

to be discarded in the same manner as urine and excrements are, though produced from one's own body. Such a son therefore is declared equal to urine and excrements.

Menu also excludes the vicious from inheritance.

19. Menu, also :—"All the brothers who are addicted to any vice lose their title to the inheritance."

Explanation of certain terms in the passage.

"Any vice" means any forbidden acts. "Inheritance" means partible estate:

Those debarred from inheriting should be maintained. Passage of Yájnavalkya.

20. All those that are above enumerated as incompetent to inherit are yet entitled to be maintained. Accordingly, Yájña-valkya :—"An impotent person, an outcast and his issue, one lame, a madman, an idiot, a blind man, and a person afflicted with an incurable disease and others (similarly disqualified) must be maintained,(1) excluding them, however, from participation."

Exposition of the above passage.

21. "His issue"] The offspring of an outcast. "And others"] Other disqualified persons above enumerated. "Must be maintained"] By those that take the inheritance; Vishnu having declared, "They are to be maintained by those that take the heritage."

Passage of Menu as to how they are to be maintained.

22. If it be asked how are they to be maintained, Menu says, "But it is fit that a wise man should give all of them food and raiment,(2) without stint, to the best of his power: for, he who gives it not shall be deemed an outcast." "Without stint" means for life.

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(1). See para. 31 of this chapter for exceptions to this rule.

(2). A wise man should give all of them food and raiment] In reference to this part of the passage, the following note is to be found in Mit. chap. ii. sec. x. para. 5: "Other authorities (as Devala and Baudhâyana) except the outcast and his offspring. That exception not being here made, it is to be inferred that one whose offence may be expiated and who is disposed to perform the enjoined penance, should be maintained; not one whose crime is inexpiable—Balambhatta." See paras. 26 and 27 of this chapter as to the authorities of Devala and Baudhâyana.

23. Kátyáyana:—"Food and raiment *without stint*,(1) *i.e.* for life, are considered to be due to him by his kinsmen. But on failure of them, he may take the paternal wealth. The kinsmen shall not be compelled to give the wealth received by them not being his patrimony."(2)

Passage of Kátyáyana on the same subject.

"His kinsmen" means the kinsmen of him who is excluded from inheritance.

24. The meaning is, that Menu and others consider that food and raiment are to be supplied to him who is excluded from inheritance by those who take his father's wealth. The meaning of the last sentence ("the kinsmen, &c.") of the text is, that where kinsmen have not taken the estate of the father of one who is excluded from inheritance, they are not to be compelled by the king to pay him maintenance.

Exposition of the above passage.

25. The rule hence settled is, that it is not necessary for kinsmen who have not taken the patrimony of one excluded from inheritance to maintain such person.

Kinsmen who have not taken the patrimony of one excluded from inheritance are not bound to maintain him.

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(1). Jimuta Vahana reads Grásáchha danamátram "Food and raiment only" instead of Grásáctiháḍanam atyantam "food and raiment for life." See Jim. Vah. chapter v. para. 16, and Note.

(2). Not being his patrimony] In reference to this portion of the passage, the following note is to be found in Jim. Vah. chap. v. para. 16. "The commentators, Crikrishna and Achyuta, state another reading in the first instance; Svapitryam "[their] own patrimony," instead of Apitryam "not [his] patrimony." They notice, however, this last reading, as one which may have been intended by the author. It is that which the Smruti Chandrika, Ratnakara and other compilations exhibit. Crikrishna and Achyuta deduce the same meaning in both ways of reading the text. But Maheçvara understood the passage differently; 'The kinsmen shall not be compelled to give up to him wealth received by them being his own patrimony': they shall not be compelled to share it with him; but he must be maintained by them with food and raiment. Chudamani, again, follows the other reading, but with a different interpretation: 'The kinsmen shall not be compelled to give up his father's wealth, received by them, though not their patrimony.' The reading exhibited in this treatise is "Apitryam" and not "Svapitryam."

Outcast and his issue are not entitled even to maintenance. Text of Devala.

26. Although maintenance is thus generally provided for all excluded from inheritance, Devala makes an exception to the rule. "For such men *except those degraded*, let food and clothes be provided. The issue of an outcast being also an outcast, is likewise excluded."

Text of Baudhâyana enjoining the support of all disqualified persons, with the exception of the outcast and his issue.

27. Hence, Baudhâyana: "Let the co-heirs support with food and apparel those who are incapable of business as well as idiots, blind and impotent persons, those afflicted with disease and calamity and others who are incompetent for the performance of duties, excepting, however, the outcast and his issue."

Exposition of the above text.

28. Those who are incapable of business] The dumb and the like. Others who are incompetent for the performance of duties] Those who are unfit for acts relating to religion or profession.

Passage of Vasishtha as to who are excluded from inheritance, and who are entitled to be maintained.

29. Vasishtha, by indirect expressions, shews that four classes of persons are not entitled to be maintained. "Those who have assumed another order are excluded from inheritance, as also those that are impotent, mad, or degraded. The impotent and mad are, however, to be maintained."

Exposition of the above passage of Vasishtha.

30. This text indicates the exclusion of an outcast and of one who has assumed another order from maintenance in virtue of the maxim that "Of several things, if a quality be ascribed to a few particularly, it is necessarily inferrible that the others are devoid of that quality." As, without entering into a religious order, there can be no apostasy from religious order, it follows by saying that one who has assumed another order is not entitled to be maintained, that an apostate from a religious order is also likewise excluded from maintenance.

31. The conclusion hence is that maintenance is necessary to be given to all excluded from inheritance, with the exception of the following four—I, an outcast: II, his issue: III, one who has assumed another order, *i. e.* religious order: IV, an apostate from a religious order.

Conclusion.

32. It might perhaps be doubted whether or not the sons of those that are excluded from inheritance, though themselves possessing no such disability as impotence, &c., are still unworthy of inheriting their grandfather's estate on the ground that they are the offspring of disqualified persons. Devala, in order, to clear the doubt, says: "Let the sons of such as have sons take the shares of their parents,(1) if themselves have no similar disability."

Sons of disqualified persons inherit, if free from similar defect.

Text of Devala.

33. Sons of such] Sons of those that are excluded from inheritance.(2) Similar disability] Impotence and the like barring title to inheritance. Shares of their parents] Shares of their parents in the wealth of their grandfather.

Exposition of the above text.

34. From its being generally mentioned in the foregoing passage "The sons of such," it must not be supposed that the passage authorizes the son of an outcast also to inherit the wealth of his grandfather. He is clearly excluded by the words "If themselves have no similar disability" in the passage; the male issue of an outcast being also an outcast.

The son of an outcast excluded from inheriting the wealth of his grandfather.

35. Vasishtha, accordingly: "One (not being a female) born to an outcast is declared to be an outcast. As for the female issue

Passage of Vasishtha on the subject.

(1). The shares of their parents] Such shares as their fathers would have had if capable of inheriting.

(2). A dumb man or the like may have either natural offspring or issue raised up to him by his wife. But the impotent can only have issue so raised—Crikrishna, note to Jim. Vah. chap. v, para. 19.

of an outcast, she is a 'Paragami,' or one that enters (as do females in general) a different family by reason of marriage."

The son of a Pratilomaja is also disqualified for inheritance.

36. Like the son of an outcast, the son of one produced by a woman called "Pratiloma" (1) is disqualified to inherit his grandfather's estate, there being in his case disability fatal to inheritance. Accordingly, Vishnu:

Text of Vishnu.

"The legitimate sons of these are sharers, but not the sons of a degraded man born immediately (Anantharam) (2) to the commission of the act which caused his degradation, nor those are produced by a woman called 'Pratiloma': their sons do not participate even in the property left by the paternal grandfather."

Exposition of the text.

37. "Born immediately (Anantharam)" means born at any time after the occurrence of the act which was the cause of degradation. It is not necessary here that the birth should have occurred *immediately after* the act as the term "Anantharam" goes literally to signify. The sons so born are not therefore entitled to inheritance.

Specification of other sons similarly disqualified to inherit their grandfather's estate.

38. In like manner, incapacity to inherit the grandfather's estate attaches also to the sons of an apostate from a religious order as well as to such other sons as are, by reason of defects, disqualified to inherit.

Sons of impotent and the like, whether legitimate or Kshetraja, are entitled to allotments, if free from similar defects. Text of Yájnavalkya.

39. As to "Kshetraja" or son of the wife procreated by a kinsman authorized to raise up issue to the husband, Yájñavalkya says, "But their sons (the sons of

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(1). "Pratiloma" means contrary to the regular course. A woman is termed "Pratiloma," who, being herself of a higher class, keeps connexion with one of a lower class. A son produced by a woman higher than the begetter, with respect to class, is called "Pratilomaja."

(2). "Anantharam" literally signifies "without intervening period." This may be either before or after the occurrence of an act. But in the present instance, it is used to denote "after."

the impotent(1) and the like), whether legitimate or the offspring of the wife by a kinsman (Kshetraja), are entitled to allotments, if free from similar defects."

The above text of Yájnavalkya not applicable to Kali age.

40. This passage must be understood as applicable to Dwapara and other ages; a son of the class of "Kshetraja" being prohibited in the Kali age.

Disqualified legitimate sons, &c. ought to be maintained.

41. As for disqualified legitimate sons, &c. of disqualified persons, that they ought to be maintained, has been shewn by this very author (Yájñavalkya) in the passage "A blind man and a person afflicted with incurable disease and others similarly disqualified must be maintained, excluding them, however, from participation, para. 20." It is not therefore here repeated.

Daughters of disqualified persons must be supported until married. Wives of disqualified persons must be maintained unless unchaste. Passage of Yájnavalkya.

42. The following, however, is a passage of the same author on a subject not already noticed. "Their daughters must be maintained likewise until they are provided with husbands. Their childless wives conducting themselves aright must be supported; but such as are unchaste should be expelled; and so indeed should those who are perverse."

Exposition of the above passage.

43. Their daughters] Unmarried female children of those excluded from inheritance. Must be maintained] By the persons that take the wealth of the father of those excluded from inheritance. In order to avoid the supposition that they are to be maintained *for life* like those excluded from inheritance, it has been said "Until they are provided with husbands," that is, until they are disposed of in marriage. Their childless wives, that is, the legitimate wives of those excluded

(1). An impotent man can only have that offspring which is termed the issue of the wife. See Mit. chap. ii. sec. x. para. 11; see also note to para. 33, chap. v. of this treatise.

from inheritance, being destitute of male issue and behaving always virtuously, are to be maintained by those who take the estate of the father of the disqualified persons in the same manner as the disqualified persons themselves are maintained. Such wives, however, as are unchaste or perverse towards the person maintaining them, are to be turned out of the house. Unchaste wives who have been expelled are not to be maintained,(1) but those that are perverse are to be maintained though they have been expelled.

End.

44. Thus it has been explained who are persons incompetent to inherit.

SUMMARY (BY THE TRANSLATOR).

I. The following persons are disqualified for inheritance :—I, An impotent man : II, A leper : III, A madman : IV, An idiot : V, An outcast : VI, The offspring of an outcast : VII, A perpetual student : VIII, A hermit : IX, An ascetic : X, A sectary or heretic called "Kshapanaka," "Páçupata" or the like : XI, One who is blind by birth : XII, One who is deaf by birth : XIII, A dumb man : XIV, One who has lost an organ, such as the power of smell &c. by reason of disease or the like : XV, An enemy to his father : XVI, One formally degraded : XVII, One afflicted with incurable disease : XVIII, The son of a woman married in irregular order : XIX, The son of a woman espoused by her kinsman (Sagotra) : XX, An apostate from a religious order : XXI, The son of an adulteress : XXII, One procreated in violation of the rules of appointment : XXIII, A son destitute of virtue.

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(1). Case No. 2 of 1823, I Mad. Sel. Dec. 366, M. S. D. 1857, page 139, S. A. No. 369 of 1862, I M. H. C. R., page 372. In the Judgment of the High Court in the latter case, they have ruled that "A Hindu adulteress living apart from her husband cannot recover maintenance from him so long as the adultery is uncondoned."

II. One excluded from inheritance must be maintained by those who take his father's wealth.

III. One that does not take the patrimony of the excluded is not bound to maintain him.

IV. The following four classes of disqualified persons are not entitled even to maintenance,—I, An outcast : II, His issue : III, One who has assumed a religious order, *i. e.* an ascetic : IV, An apostate from a religious order.

V. Sons of disqualified persons, with the exception of the three classes below noticed, take the shares of their parents if themselves have no similar defects—

I. The son of an outcast.

II. The son produced by a woman of a higher class than the begetter.

III. The son of an apostate from religious order.

These three classes of sons are disqualified for inheritance.

VI. The disqualified sons of disqualified persons (not falling within the exceptions above noticed) must be maintained.

VII. The daughters of disqualified persons must be supported until married.

VIII. Wives of disqualified persons must be maintained, unless unchaste.

IX. Wives unchaste or perverse are to be turned out of the house.

X. Unchaste wives who have been expelled are not to be maintained, but those that are perverse are to be maintained though they have been expelled.

CHAPTER VI.

ON PROPERTY LIABLE TO PARTITION.

Kátyáyana specifies three kinds of property as divisible.

1. Kátyáyana: "What belonged to the grandfather* or to the father and anything else (appertaining to the co-heirs having been) acquired by themselves must all be divided at a partition among heirs."

Exposition of the passage.

2. Acquired by themselves] Acquired with the use of the paternal or other common wealth; for, an acquisition without the use of such wealth is indivisible.†

The debts, if any, are to be first discharged out of the partible wealth, and the residue divided.

3. There are thus three kinds of property that are wholly divisible. But this is only where there may be no debts contracted by the grandfather and the like. Where there exist such debts, the whole property is not to be divided, but only so much of it as remains after discharging the debts. (1)

Passage of Kátyáyana on the subject.

4. The same author accordingly says, "After paying the debts and also affectionate (2) gifts (Priti Pradanam), let the residue be divided."

"Affectionate gifts"] Presents made through affection.

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* To the paternal grandfather] Meaning any relation in general. Note to Jim. Vah. chap. vi. sec. i. para. 1.

† See chapter vii. of this treatise.

(1). See chapter ii. sec. ii. para. 20 of this treatise; and for exceptions to the rule, see para. 24 of the same section.

(2). I think these are gifts not of the nature of the "affectionate gift" (Priti Dattam) referred to in chap. ii. sec. ii. para. 24 of this treatise, which, it is declared therein, must be divided and must not be paid out of the patrimony. The difference between the two kinds of affectionate gifts is not, however, apparent.

5. By saying that the residue is to be divided, it is inferrible that the passage contemplates a case where the estate is large. Where the estate is not large, it has already been shewn(1) in that part of this work which treats of partition after the father's decease, that debts are to be divided in the same manner as effects.

The above passage is applicable where the estate is large.

6. In order to ascertain properly at the time of partition the extent of debts and also that of affectionate gifts promised, the same author (Kátyáyana) says that they must be examined by the heirs with the kinsmen. "Debts of this kind must be examined at a partition in company with the kinsmen."

How the extent of debts and affectionate gifts are to be ascertained. Passage of Kátyáyana.

7. The same author further states that discovery must be made of effects which are, in their nature, such as can be concealed. "Thus Bhrigu has declared that household utensils, beasts of burthen, and milch cattle, ornaments and workmen, must be divided when discovered among the heirs, and that if effects are suspected to be hidden, a discovery must be made by the Koça mode of ordeal."(2)

Passage of the same author as to how effects admitting of being concealed are to be examined.

8. Workmen] Slaves and other menials. Suspected] Where there is suspicion that the property has been concealed. The meaning of the passage is that, in such a case, Bhrigu ordains that mode of ordeal(3) which is called "Koça."

Exposition of the above text.

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(1). See chap. ii. sec. ii. paras. 18 and 23 of this treatise.

(2). This mode of ordeal is said to be by touching the water in which a principal idol has been washed. There are, according to Yájnavalkaya and others, four kinds of ordeals : Agni-divyam, by fire ; Jaladivyam, by water ; Visha-divyam, by poison ; Koça-divyam, by holy water ; and, according to Nareda and others, four (in addition) ; Tandula-dyvyam, by chewing dry rice ; Tapatmasha-divyam, by taking gold from clarified butter, while hot ; Phala-divyam, by the hot ploughshare ; Dharmaja-divyam, by taking one of two images representing justice and injustice from a covered pot—Ellis' Lectures, part the third. See note to Vyavahara Mayukha, chap. iii. para. 2.

(3). Proof by ordeal cannot be resorted to in questions arising upon the fact of partition. See chap. xvi. para. 17 of this treatise.

A further passage of Kátyáyana.

9. Again, the same author says, "Pratyaya (ordeal) is ordained where there is suspicion of concealment of property."

Explanation of the term "Pratyaya" used in the passage.

10. The term "Pratyaya" is here used in a limited sense, signifying the same kind of ordeal (Koça) as has been already noticed (paragraph 7).

Passage of Brahaspati on the same subject.

11. Brahaspati, too, alludes to Koça alone as the mode of ordeal to be observed. "Household utensils, beasts of burthen and milch cattle, ornaments and workmen must be divided when discovered. Where effects are suspected to be hidden, a discovery by Koça is ordained."

Explanation of the term "Koça" used in the passage.

12. The term Koça used in the above passage must not be said to refer to ordeals of all sorts (but only to that kind of ordeal which is styled "Koca").

Passage of Kátyáyana.

13. In Kátyáyana's work on partition, it is said "Should there be suspicion of want of faith in the distribution of family assets, instead of weighing a host of evidentiary matters, let the Koça ordeal *alone* be undergone."(1)

Explanation of the term "Koça" used in the passage.

14. As the term "Koça" has here apparently a limited sense (2) it must be understood that the term has been used in the same sense in the text of the same author (Kátyáyana) quoted in para. 7. It hence follows that the same sense attaches to the term Koça used in the passage of Brahaspati above quoted, para. 11.

End.

15. Thus property liable to partition has been explained.

(1). In V. M. chap. iv. sec. vi. para. 3, this text is translated as follows: "In sustaining the truth of doubts in partition among heirs, at all times, (and) in settling a multitude of proofs (kriya), let them even undergo the Koça ordeal."

(2). The limited sense is inferrible from the word "*alone*" used in the passage.

SUMMARY (BY THE TRANSLATOR).

I. The following three kinds of property are divisible—

i. Property belonging to the grandfather.

ii. Property belonging to the father.

iii. Property acquired by the co-heirs themselves, with the use of paternal wealth.

II. Debts contracted by the grandfather and the like, and also affectionate gifts are to be paid out of the estate and the residue is to be divided.

III. This is only where the estate is large, but where the estate is small the debts and assets are both to be divided.

IV. Where effects are suspected to be hidden, a discovery by the Koça mode of ordeal may be made. No other mode of ordeal is to be resorted to.

CHAPTER VII.

ON PROPERTY NOT LIABLE TO PARTITION.

Vyasa enumerates gains exempt from partition.

1. Vyasa :—" Wealth gained by science, or earned by valour or received from affectionate kindred* belongs at the time of partition to him (who acquired it) and shall not be claimed by the co-heirs."

How learning should have been acquired in order to render the gains impartible.

2. By the words "gained by science," it is not to be understood that wealth gained by learning generally is impartible, but the learning should have been acquired in the peculiar mode described by Kátyáyana in the passage, "Wealth gained through science, which was acquired from a stranger while receiving a foreign maintenance, is termed "Acquisition through learning." (1)

Explanation of certain terms in the above passage of Kátyáyana.

3. The words "stranger" and "foreign," used in the above passage, refer to one not being a member of the undivided family. The word "maintenance" implies wealth in general required for subsistence.

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* Received from affectionate kindred] The Samskrit term of which the above is the translation is "Saudayika." Jimuta Vahana, in chap. vi. sec. i. para. 11 of his treatise, expounds this term to be "Wealth obtained through favour or the like from a father, uncle, or other kind relations." As to Saudayika forming the separate property of a woman, see chap. ix. sec. ii. paras. 3 to 12 of this treatise.

(1). The ordinary gains of science are divisible when such science has been imparted at the family expense and acquired while receiving a family maintenance—Chalakonda Alasáni *vers.* Chalakonda Ratnáchallam and another. II M. H. C. R. page 56 ; see also Lexmion Row Sadasew *vers.* Mullar Row Bajee, 2 Knapp. P. C. R. 60, 63—Stokes.

Chudamani and Crikrishna, however, remark on the phrase "with the assistance of the patrimony" occurring in the text of Nareda, cited in para. 11 of this chapter, that it regards the employment of funds otherwise than for food and raiment. See note to Jim. Vah. chap. vi. sec. i. para. 16.

4. Wealth, the result of science acquired as above stated, is gained under different circumstances. The wealth acquired assumes also different forms according to the circumstances under which the acquisition in each instance has been made. That all such acquisitions are indivisible, has been concisely stated by Vyasa in the general words "wealth gained by *science*." Kátyáyana, however, details them as follows:—

Gains of science described by Kátyáyana.

I.—"What is gained by proving superior learning[(a)] after a prize has been offered, must be considered as acquired through science and is not included in partition among co-heirs.

II.—What has been obtained from a pupil[(b)] or by officiating as a priest[(c)] or for answering a question[(d)] or for determining a point in dispute[(e)] or for the display of knowledge[(f)] or by (success in) disputation[(g)] or for reciting the Vedas with transcendent ability,[(h)] the Sages have declared to be the gains of science and not subject to distribution.

III.—What is gained through skill by winning from another a stake at play,[(i)] Brahaspati ordains as acquired by science and not liable to partition.

IV.—What is obtained by the boast of learning,[(j)] what is received from a pupil[(k)] or for the performance of a sacrifice,[(l)] Bhrigu calls the acquisition of science.

V.—The same rule[(m)] likewise prevails in regard to artists[(n)] and in regard to what has been gained in excess of the prescribed hire.[(o)] (1)

VI. What has been gained from superiority in learning[(p)] and what has been acquired in a sacrifice or from a pupil, Sages have declared to be the acquisition of science.

VII.—What is otherwise acquired[(q)] is the joint property."

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(1). In regard to what has been gained in excess of the prescribed hire] This portion of the passage has been translated in Colebrooke's Jim. Vah. chap. vi. sec. ii. para. 1 "for the excess above the price of the common goods," and in II Digest 444 (para. 4) "to increase of price from superior skill in them."

Exposition of the above passage of Kâtyâyana.

5. [a]By proving superior learning] By proving extra-ordinary merit in verbal debates and the like. [b]From a pupil] By affording instruction in Vedas. [c] By officiating as a priest] By officiating at a sacrifice, &c. [d] For answering a question] For replying to a question propounded in regard to the mode of ceremony to be performed in expiation of a heinous crime, &c. [e] For determining a point in dispute] For determining a point in issue, on hearing the allegations of the complainant and the defence of the opponent. [f] For the display of knowledge] For luminously exhibiting one's own knowledge so as to acquire priority in point of honour &c. [g] By success in disputation] By getting the better of another in an ostentatious and argumentative discussion. [h] For reciting the Vedas with transcendent ability] For completing the recitation of Vedas or parts of them within appointed hours. [i] What is gained through skill by winning from another a stake at play] Winning from another a stake at play by the influence of mysterious incantations, such as "Aksha Hridya" and the like. [j]What is obtained by the boast of learning] By the boast of high learning. [k]What is received from a pupil] As a mark of veneration to the priest. [l]For the performance of a sacrifice] For watching the progress of a sacrifice, &c. [n]Artists] [1]Those who subsist by arts. [m]The same rule] The rule relating to the indivisibility of the gains of learning. [o]In regard to what has been gained in excess of the prescribed hire] In regard to what has been acquired over and above the stipulated salary in the teaching of Vedas, &c. What has been gained from superiority in learning] From eminence displayed in learning so as to secure the prize assigned to an eminent person. [p]What has been acquired in a sacrifice or from a pupil] What has been gained as a reward

(1). In the case of an artist, where he takes gold or the like belonging to the joint stock and makes bracelets or similar things, the value which is thus superadded by the skill of the artist to the price of the gold, &c. is an acquisition made through science—Note to Jim. Vah. chap. vi. sec. ii. para. 1.

in a sacrifice or from a pupil. All these are to be considered as property acquired by science exclusively. (୨)What is otherwise acquired, *i. e.* acquired otherwise than by science or acquired with the use of the paternal common wealth is the joint property of the undivided co-heirs and is as such divisible. The remaining portions of the texts are too clear to require explanation.

Gains of science, defined by Nareda.

6. Nareda, too, defines what is partible wealth gained by learning, "If one parcener, be he ever so ignorant,(1) shall maintain the family of a brother studying science, he shall share the wealth which that brother may gain by his learning."(2)

Exposition of the passage.

This text is intended to shew that wealth gained by science acquired with the use of joint funds is divisible. Be he ever so ignorant] Although he be unlearned.

Wealth acquired by instructions received from the father or the like is divisible. Text of Kátyáyana.

7. Likewise, wealth acquired by means of any art or science, inculcated by the undivided father and the like is also divisible. Kátyáyana: "Brahaspati has ordained that wealth shall be partible if it was gained by learned brothers who were instructed in the family by their father or (by their paternal grandfather or uncles); and it is the same if the wealth was acquired by valour."

Exposition of the passage.

8. The meaning of this passage is that it has been ordained by Brahaspati that the wealth of those instructed in their own undivided family by their uncles, and the like, or by their father is divisible where it has been acquired by valour or by learning so gained.

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(1). Be he ever so ignorant] In lieu of this phrase, the words "though not told" have been used in the version of this passage in V. M. chap. iv. sec. vii. para. 9. It is owing to a difference in the construction of the term "Açruta" used in the text. Açruta means unlearned according to the Smruti Chandrika, but Vyvahara Mayukha construes it as "not promised."

(2). If one parcener] If the support were afforded by two or by three unlettered co-heirs, all these shall participate. See note to Jim. Vah. chap. vi sec. i. para. 15.

9. Even in such acquisition by learning as is partible, the acquirer is entitled to a greater share; Vasishtha having declared, "He among them who has made an acquisition may take a double portion of it."(1)

The acquirer has a double share if the patrimony have been used. Text of Vasishtha.

10. Gautama, however, permits in some instances the allotment of shares (to co-heirs) at the option of the acquirer, even in such acquisitions by science as are in their nature impartible. "A learned man shall give a share of his own acquired property to learned (co-heirs) at his option."

Even in gains of science impartible, the acquirer may give a share to his learned co-heir. Text of Gautama.

Learned] Learned in science.

11. Nareda says that the acquirer who is not willing need not give this share. "A learned man not disposed to give a share out of his own acquired wealth to a learned (2) co-heir need not give it, unless the wealth was acquired with the assistance of the patrimony,(3) in which case it is divisible among them."

An acquirer need not give against his inclination to his learned co-heir a share in his gains of science acquired without the use of the patrimony. Text of Nareda.

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(1). Yájnavalkya, however, propounds an exception to this rule: "But if the common stock be improved, an equal division is ordained"—Mit. chap. i. sec. iv. para. 30. The improvement referred to is through agriculture, commerce, or similar means—Ibid, para. 31. But there is no rule of law which precludes one member of an undivided family, though living together, from entering into an agreement with his co-parceners in respect of the expenditure upon the family property and re-payment of self-acquired funds; and such an agreement is rendered more reasonable and probable where portions of the family property are occupied and enjoyed by each of the members living separately.

See Muttusamy Goundan *vers.* Subramanya Goundan—I M. H. C. R. 309.

(2). To a learned co-heir] This is said "to an unlearned co-heir" in Jim. Vah. chap. vi. sec. i. para. 17; in II Digest, page 449, verse 351; and in V. M. chap. iv. sec. vii. para. 10.

(3). With the assistance of the patrimony] This regards the employment of funds otherwise than for food and raiment; for, wealth must be used for such purposes even by a person remaining at home—Chudámani and Cri-krisna; see note to Jim. Vah. chap. vi. sec. i. para. 16.

12. The wealth referred to in the first hemistich (or the former part) of the above text will be understood from what has been said in the second hemistich (or the latter part) to be *impartible* wealth gained by science (or, in other words, to be the gains of science acquired *without* the use of the patrimony).

Exposition of the text.

13. An unlearned co-heir cannot be allowed a share, although one may be disposed to give it to him. Kátyáyana, accordingly, "Wealth acquired by a learned heir shall never be divided among his ignorant co-heirs; but he may share it with such of the parceners as are equal or superior to him in learning."

The gains of science shall not be shared with an unlearned co-heir even though the acquirer may be inclined to do so. Text of Kátyáyana.

14. By saying "shall *never* be divided among the ignorant co-heirs," it is shewn that the wealth shall not be divided with them even though one may be disposed to do so.

Exposition of the text.

15. The same author (Kátyáyana) defines wealth gained by valour. "When (a soldier) performs a gallant action, despising danger, and favour is shewn to him by his lord pleased with that action; whatever property is then received by him shall be considered as gained by valour." A gallant action means a brave feat.

Gains of valour, defined by the same author.

16. The same author propounds another kind of impartible wealth. "That which is taken under a standard is declared not to be subject to partition."

Wealth taken under a standard not subject to partition.

17. He also explains what is called wealth taken under a standard. "What is seized (by a soldier) in war, after risking his life for his lord and routing the forces of the enemy, is named spoil taken under a standard."

Wealth taken under a standard, defined.

18. Vyasa has included the above kind of acquisition in the gains of valour. As, however, such a kind of acquisition is of a distinguished character, Kátyáyana

Reason why Kátyáyana should make a separate mention of wealth taken under a standard.

propounded it separately under the head of "wealth taken under a standard."

19. In this instance, too, it must be understood that, to render the acquisition impartible, it is necessary that it should have been, like wealth gained by learning, acquired without the use of the undivided wealth of the father and the like. Vyasa, therefore, says that whatever is acquired with the use of such wealth is partible by unequal portions. "The brethren participate in that wealth which one of them gains by valour or the like, using any common property, either a weapon or a vehicle. To him two shares should be given, but the rest should share alike."

Gains of valour or the like are impartible, if made without the use of the common wealth.

If acquired with the use of the common wealth, the gains are partible by unequal portions. Text of Vyasa.

20. Common property] Property belonging in common to undivided co-heirs. The word "brethren" used in the text applies generally to all undivided co-heirs. "To him" means to the acquirer of property with the use of common funds. By saying "by valour *or the like*," it implies that in certain other instances also, such as in case of wealth received with a maiden or wealth received on account of marriage, it is *divisible* where the marriage(1) has been performed with the use of joint funds.

Exposition of the text.

21. Kátyáyana defines wealth received with a maiden and wealth received on account of marriage. "What(2) is received when a damsel equal in class is given in gift (before marriage), let a man consider as wealth received with the maiden : it is deemed pure

Wealth received with a maiden and wealth received in consequence of marriage, defined. Text of Kátyáyana.

(1). Mitákshara holds that what is received at a marriage concluded in the form termed "Asura" or the like is divisible, for, at such a marriage wealth is received from the bridegroom by the father or kinsmen of the bride. See Mit. chap. i. sec. iv. para. 6, and Note.

(2). In the Digest, vol. ii. page 463, these passages are attributed to Menu.

and promotes increase of prosperity. But let him know that what he receives with his bride is wealth received on account of marriage: all such wealth is considered as vindicating the solemn rite."

Certain terms in the above passage explained.

Received with the maiden] Received together with the damsel.

22. As for Stridhana, the same author states that all kinds of Stridhana are impartible.(1)

Stridhana impartible.

"Whatever is presented at the time(2) of nuptials to the bridegroom, belongs entirely to the bride and shall not be shared by the kinsmen.(3) The gains of valour and of science as also what is considered Stridhana; these are also not liable to partition by the co-heirs at the time of division."

23. Brahaspati, too, defines what is impartible. "What is given by a paternal grandfather, by a father and also by a mother, the gains of valour, the wealth received with a wife; these belong to him and are not to be taken, that is, claimed by co-heirs."

Brahaspati defines what is impartible.

24. As respects gift by a mother, Nareda declares: "The same law applies also to him to whom anything has been given by his mother through affection, for, as a father, so has a mother, power." The giving under this passage must be out of the mother's own peculiar property. "The same law" means the law stated in the case of gift by a father.

Passage of Nareda as respects gift by a mother.

Interpretation of the passage.

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(1). See chap. ix. sec. ii. para. 26 of this treatise.

(2). This I think does not include the time when the bride is given in gift by her father or the like to the bridegroom in the form usual at every solemn donation, for, presents received at the time of this gift fall within the head of "wealth received with a maiden" as defined in para. 21, and is partible under para. 20, where the marriage is performed with the use of joint funds. The rites connected with "Vevaham," or marriage, strictly commence *after* the damsel is given in gift and does not include the ceremonies attending the donation.

(3). In Dayágrama Sangraha, chap. ii, sec. ii. para. 5, this passage is attributed to Vyasa.

25. Gift by a friend is also indivisible. Accordingly, Yájñavalkya, "Whatever[1] else is acquired by the co-parcener himself without detriment to the father's estate, as a present from a friend[2] or a gift at nuptials, does not appertain to the co-heirs."

Gift by a friend is also indivisible. Text of Yájnavalkya.

26. Menu adds to this a present (Madhuparka)[3] made as a mark of respect. "So does any thing given by a friend, received on account of marriage[4] or presented as a mark of respect (Madhuparka)."

Passage of Menu as to Madhuparka.

27. The principle contained in Yájñavalkya's text, *i. e.* "Whatever else is acquired by the co-parcener himself without detriment to the father's estate" (para. 25) is explained by Menu in his passage, "What has been acquired by labour without prejudice to the father's estate."

Menu's explanation of the text of Yájnavalkya.

28. In both the above passages, the word "father" signifies an undivided co-heir generally. "By labour" means by acts requiring labour, such as agriculture, &c. "Without prejudice," means without detriment.

Exposition of the passages of Yájnavalkya and Menu.

29. Vyasa, too: "Whatever a man gains by his own labour without the assistance of the father's estate shall not be given by him to the co-heirs."

Passage of Vyasa on the same subject.

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(1). Mit. chap. i. sec. iv. para. 1.

(2). See Rewen Persad *v.* Mt. Radha Beeby, 4 Moore, I A. Ca. 162.

If any thing be given to one, expressly in consideration of his being the son of a person named, all the sons of that person are entitled to partake. See note to Jim. Vah. chap. vi. sec. i. para. 51.

(3). Madhuparka is a prepared food of honey, liquid butter, and curds presented to a person to whom it is intended to show particular respect on his coming to a house, as to a guest, to a bridegroom at a marriage, to a Brahmin at a sacrifice, and the like. See note to Jim. Vah. chap. vi. sec. i. para. 9 as to the interpretation of "Madhuparka" by Medhétithe and Góvinda-rája.

(4). On account of marriage] Received from a father-in-law, on account of becoming his son-in-law. Note to Jim. Vah. chap. vi. sec. i. para. 9.

30. "Without the assistance," means without deriving assistance for the purpose of gaining. The word "father" is used to denote an undivided co-heir generally.

Exposition of the passage.

31. On this subject, Prajâpati says:—"Wealth gained by science, valour, or labour, a present made as a mark of respect (Madhuparka), a present from a friend or a gift at nuptials to a brother; all these cannot be divided by the other brothers."

Passage of Prajâpati.

By labour] By agriculture, &c.

32. Likewise, where one, by his self-exertion, recovers a property belonging hereditarily to the family and which had been seized by others, he shall not give it up to the co-heirs, it being declared by Yájñavalkya, "Nor shall he who recovers hereditary property which had been taken away, give it up to the parceners."

Property recovered through self-exertion need not be given to the co-heirs. Text of Yájnavalkya.

Property]. Property not being land.

33. As for landed property, Çankha says, "Land (inherited) in regular succession but which had been formerly lost and which a single heir shall recover, the rest may divide according to their due allotments, having first given him a fourth part."(1)

Text of Cankha as to landed property, recovered.

34. The meaning of this text is, whoever among the sons and grandsons shall recover, by his own exertions, lands descended in regular succession, and which had been formerly lost, that is, seized by others, one-fourth share of such property is to be given to him, and the rest is to be divided by the other brothers in company with the recoverer.

Exposition of the text.

35. Some, however, think that this text of Çankha is applicable to the case of land and every other kind of property recovered by one *without* permission

The opinion of some authors as to in what case the text of Cankha is applicable and in what case that of Yájnavalkya.

(1). See chap. viii. paras. 27 and 28 as to the law where recovery is made by the father.

from the other co-heirs granted in the words "Let what you shall recover be taken by yourself," and that the text of Yájñavalkya refers to land and every other kind of property recovered *with* such permission.

Opinion of the author of the Smruti Chandrika.

36. Of these opinions(1) that which is reasonable, may be adopted.(2)

Opinion of Vyasa as to the share of the co-heir recovering common property.

37. On the subject of recovering land or other property seized by others, Vyasa says, as follows, "Where a co-heir undertakes, whether a division has or has not taken place, if he recovers common property, he is entitled to a share."(3)

Exposition of the passage of Vyasa.

38. The meaning of this(4) passage is, that the co-heir who recovers partible property seized by others takes a double share of such property.

Menu's enumeration of other things exempt from partition.

39. Menu enumerates other things exempt from partition. "Clothes, instruments (Patram), ornaments, prepared food, water, women, sacrifices and pious acts, (Yóga-kshéma), as well as the pasture ground (Pracharam), are declared not liable to distribution."

Exposition of the passage of Menu.

40. Clothes] Clothes worn by undivided members; Kátyáyana having declared "Clothes are those which are worn on the body."

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(1). See paras. 32 to 34 for one opinion, and para. 35 for the other.

(2). I think that of these two opinions, that which may be found conformable to usage, must prevail.

(3). The author of the Smruti Chandrika cites this very passage in chap. xiii. where he, however, attributes it to Brahaspati and explains the meaning of it in a different manner. Vide chap. xiii. para. 26 of this treatise.

(4). Whether the rule contained in this passags of Vyasa is or is not to be observed in supersession of the rules contained in the passages of Yájuavalkya and Cankha, quoted in paras. 32 and 33 respectively of this chapter, the author of the Smruti Chandrika does not say.

"Instruments (Patram)(1)] Debts secured by written instruments; the same author having used the expression 'Property founded on a (Patram) written instrument.'"

Women] Female slaves.

Water] Water contained in a pond or well situated in one's own house. Yóga-kshéma(2)] This term (a conjunctive compound, as it is resolvable into Yóga and Kshéma) has been explained by Laugákshi, as follows: "The learned have named a conservatory act Kshéma, and a sacrificial one Yóga. These are pronounced indivisible." Or the term Yóga-kshéma may be said to denote that gain which the co-heirs may derive from the king for the performance of Yóga-kshéma.

Prachara(3)] Ground designed for the grazing of cattle; Kátyáyana having distinctly stated, "Pasture ground for kine." Or the word "Prachara" may be considered to denote "Anganam" (a proper partition in a building) or the like used for entrance and exit.

"Declared not liable to distribution"] "Declared," it must be added here, "by some inconsiderate Smrúti-karers or commentators on law."

41. Therefore Brahaspati(4):—"They by whom it is asserted that clothes and the like are indivisible have not thought that clothes and ornaments would consti-

Passage of Brahaspati as to how clothes and the like are to be divided.

(1). Patram is construed by Jim. Vah. and Mitákshara to be vehicles, such as carriages, litters, horses, or the like—Jim. Vah. chap. vi. sec. ii. para. 24; Mit. chap. i. sec. iv. para. 18.

(2). The terms "Yóga-kshéma Prachara" are explained by Jim. Vah. to be furniture for repose or for meals. In the Ratnakara, the same words are explained as meaning family priests or spiritual counsellors, and the road by which the cattle pass. Helayudha subdivides the term Yóga-kshéma, and explains Yóga to be a boat or similar conveyance, and Kshéma a fort or other place of safety—Jim. Vah. chap. vi. sec.ii. para. 24; Digest, vol. ii. page 470.

(3). Mitákshara explains Prachara to be the common way or road of ingress and egress to and from the house, garden, or the like—Mit. chap. i. sec. iv. para. 25. For Jim. Vah.'s interpretation of the word "Prachara," see the foregoing note.

(4). This passage is translated in a somewhat different manner in Digest, vol. ii. page 472.

tute collected wealth among opulent men. These must, therefore, be divided by some mode deduced from reasoning; else they would be useless."

Exposition of the passage.

42. If (for instance) there be but one cloth, the tearing of this into pieces for the purpose of division would lead to the destruction of the thing itself. A similar mode of partition would tend to their destruction in the case of valuable securities. Where there is a large quantity of prepared food to be divided, there would occur wasteage of a great portion of such part of it as should fall to the share of one who requires but a little quantity to eat. As for a well and the like, a division of them is impracticable. Thus it would seem that these things are impartible. Still such a rational mode must be adopted in the distribution of them as would obviate the destruction of the things themselves. If, without doing so, they be allowed to remain in common, it is clear that, where, from motives of malice, obstruction is thrown by one in the way of their enjoyment by the others, the things themselves would be unemployed from no one being able to enjoy them.

Brahaspati points out the rational mode of distribution of clothes and the like.

43. The same author (Brahaspati) therefore points out the rational mode of distribution of the above things in the following passage: "By the sale of clothes and ornaments; on the recovery of a written debt; by compensating the dressed food with undressed grain, an equitable partition is made. Water drawn from a single pool or well shall be taken in due proportion.(1) Let a single female slave be successively employed by co-heirs in their respective houses, according to their several shares. If numerous, the slaves shall be distributed in equal allotments. The same law applies also to male(2) servants. The benefits

(1). In due proportion] This is translated in II Digest, page 472, "by turns," but the phrase "Tadanusaraina" used in the text does not seem to me to bear out this version.

(2). Male servants] This is translated in II Digest, page 472, "female servants."

received from Yóga-kshéma shall be equally shared, and the pasture-ground for cattle shall also be always used by the co-heirs in proportion to their allotments."

* On the recovery of a written debt] On collecting the same from the debtor. In due proportion] In proportion to the share of each.

The passage of Usánas, rejected.

44. Usánas states: "Sacrificial gains, land, written documents, prepared food, water, and women are indivisible among kinsmen even to the thousandth degree." This text is, however, to be overlooked, and the sacrificial gains and land are to be divided in the rational manner above indicated.

Conclusion.

45. The conclusion is, that the gains derived from sacrifices are divisible as also land, the division of which (land) is however to be made with the assent of all the co-heirs; Prajâpati having declared, "Whatever act is done in respect of immoveable property without the consent of the co-heirs, every such act is to be considered as not done even where one of the co-heirs does not consent to it."

Passage of Prajápati.

Another passage of Prajápati.

46. Again, the same author states: "Partition does not take place of house, lands, sacrificial gains, and also of what has been given by a father or a mother through affection."

The above passage to be rejected.

47. The prohibition contained in the above passage against division is however to be overlooked, and houses and the like are to be equitably divided in the manner afore-mentioned. Accordingly, Kátyáyana, by the passage, "The visible house, land, and quadrupeds are to be divided," expressly permits the partition of house, &c.

Passage of Kátyáyana quoted in support of the rejection of that portion of the above passage which prohibits the division of house, land, and the like.

The prohibition contained in the above passage against the division of affectionate gifts by a father also rejected in the case of immoveable property, on the authority of Vrddha Yájnavalkya.

48. Likewise, the prohibition against the division of what has been given by a father through affection is also to be disregarded in the case of immoveable property; it being declared by Vrddha Yájñavalkya, "By the affectionate gift of the father, the clothes and ornaments are gained, but immoveable property is not gained even with the father's indulgence."

Another passage of Vrddha Yájnavalkya.

49. Again, the same author states, "No one is competent even to make a partition of the inheritance descended from ancestors. It is simply to be enjoyed; there can be no gift or sale cf the same."

Explanation of certain terms in the passage.

Inheritance descended from ancestors] Land and the like belonging hereditarily to the family.

No one] Not even the father or the like.

By the particle "Api" (even) being added in the Sanskrit passages to the words "to make a partition," it is shewn that want of power applies also to a sale and the like.

Conclusion.

50. The conclusion hence is that no partition, sale, or gift is to be made of hereditary immoveable property, except with the assent of the co-heirs.(1)

SUMMARY (BY THE TRANSLATOR).

I. The gains of science are indivisible, if the learning had been acquired from a stranger while receiving maintenance from persons not being members of the undivided family.

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(1). The High Court have, however, held in their Judgment in O. S. No. 179 of 1863 (I M.H.C.R. 471) that, according to the Hindu Law current in Madras, the member of an undivided family may alien the share of the family property consisting of even immoveables, to which, if a partition took place, he would be individually entitled. They have further held in their Judgment in S. A. No. 188 of 1865 (II M.H.C.R. 416) that a sale by a father is valid by Hindu Law to the extent of his own share of the undivided estate, and that there is no distinction according to the Madras school, between a father and other co-parceners. As to the absolute power of a co-heir over his portion of property immoveable *after* partition, see chap. xv. paras. 2 and 3 of this treatise.

II. If one parcener, be he ever so ignorant, shall maintain the family of a brother studying science, he shall share the wealth which that brother may gain by his learning.

III. Likewise, the gains of science shall be divisible, if the acquirer had been instructed in his own undivided family by his father, uncle, or the like.

IV. In a partition of the gains of science that are divisible, as described in the foregoing two paragraphs, the acquirer shall be entitled to a double share.

V. In the gains of science that are indivisible as defined in para. 1 of this summary, the acquirer, if willing, may give a share to his learned co-heir, but to an ignorant co-heir he is not at liberty to give a share though he may be disposed to do so.

VI. The gains of valour acquired *with* the use of common property are divisible, but not those that are acquired *without* the use of it.

VII. In the gains of valour that are divisible, as above described, the acquirer will take two shares.

VIII. Wealth received with a maiden and wealth received on account of marriage are divisible where the marriage is performed with the use of joint funds.

IX. All kinds of Stridhana are impartible.

X. Gift by a father or paternal grandfather is indivisible, but where the gift is of immoveable property hereditarily belonging to the family, it is divisible notwithstanding the gift.

XI. Gift by a mother out of her own peculiar property is indivisible.

XII. Gift by a friend is also indivisible, provided the present is acquired without detriment to the common funds.

XIII. Madhuparka, or present made as a mark of respect, is likewise exempt from partition.

XIV. Gains of labour shall not be shared with co-parceners, if acquired without the assistance of joint funds.

XV. In respect of property belonging hereditarily to the family, which had been seized by others and which one, by

his self-exertion, recovers, the law is conflicting. According to some authors, the recoverer takes the whole property to the exclusion of the other co-heirs if it be not land, but in land, he is entitled only to a fourth portion in addition to his own share of the residue. But according to certain others, property recovered, whether land or otherwise, becomes the exclusive property of the recoverer, if the recovery is made with the permission of the other co-heirs, but if made without such permission, the recoverer is entitled only to a fourth part in addition to his own share. There is a third class of authors, who allow the recoverer a double share in the landed property recovered.

XVI. Of clothes, ornaments, instruments, food, water, women, pasture-ground, common way or the like, the distribution is to be made in a rational mode so as not to destroy the things themselves or leave them unemployed.

XVII. No partition, sale, or gift of hereditary immoveable property is to be made, except with the assent of co-heirs.

CHAPTER VIII.

ALLOTMENT OF SHARES TO SONS, GRANDSONS, AND THE LIKE.

Grandsons share the allotment which their deceased father would have had.

1. Yájñavalkya:—"Among those whose(1) fathers are deceased, the allotment of shares is according to the fathers."

Exposition of Yájnavalkya's text.

2. Among those whose fathers are deceased] Among brothers whose fathers have died undivided.

The allotment of shares is according to the fathers] The shares of property left by the father, grandfather, and great-grandfather are to be adjusted through their(2) respective fathers and not with reference to themselves.

Text of Brahaspati on the subject.

3. If it be asked what distinction does a partition make if made through fathers, Brahaspati states: "Their sons of unequal number are declared to take the shares of their respective fathers."

Exposition of the text.

4. The meaning is, where the sons of the deceased fathers are of unequal number, that is, of greater or less number, the sons of each father take the share of their own father only. For example: when one has a single son, another two, and a third many; the only son receives one share in right of his father, the two sons take one share appertaining to their father, and similarly the many sons obtain one share due to their father.

(1). There is another reading of this passage: "Anéka-pitrkánám," whose fathers are different, instead of "pramita pitrkánám," whose fathers are deceased—Mit. chap. i. sec. v. para. 1, Note.

(2). This term refers to the son, grandson, or great-grandson as the case may be.

The mode of adjustment through fathers must be observed, though thereby inequality might occur in the shares of sons by different fathers.

5. Although, by the shares being thus adjusted through fathers, there might occur inequality in the shares of sons by different fathers, yet such a mode of adjustment must be observed as being expressly enjoined.

Should a brother die before partition, his share shall be allotted to his son, provided he has received no fortune from his grandfather. Text of Kátyáyana.

6. Where, among unseparated brothers having sons, one dies, and his son has received no share from his grandfather, and the grandfather dies, Kátyáyana says: "Should a brother (anuja) die before partition, his share shall be allotted to his son, provided he has received no fortune from his grandfather; a son's son shall receive his father's share from his uncle or from his uncle's son."

Explanation of certain terms in the passage.

"Fortune" means the wealth called heritage. The term "anuja"(1) has been used in the text to denote a deceased brother in general, whether he be a junior or senior brother.

Passage of the same author as to how the share is to be divided where there may be several sons of a deceased brother.

7. Where there may be several sons of a deceased brother, then too, the same author states "The same share shall be allotted equitably to all the brothers."(2)

Shall be allotted equitably to all the brothers] Shall be divided in equal shares among all the sons, according to the principle "Equality is the rule where there is nothing laid down to the contrary."

Succession stops beyond the son of the grandson.
Text of the same author.

8. The same author further states "Or (if that grandson be also dead), let his son take the share; beyond him succession stops."

Exposition of the text.

9. The meaning is, that the son of the grandson of the deceased proprietor takes, in default

(1). The term "anuja" in Sanskrit, means a younger brother.

(2). This is where the grandsons divide among them the shares of their respective fathers in the grandfather's property.

of his father, the share of his father. Where there is no such son too, (*i. e.* son of the grandson) but his sons are in existence, they, as the descendants of the deceased proprietor, do not take a share in the property of their great-great-grandfather. The right of inheritance here ceases.

10. The objector asks how does a great-grandson at least take a share in his great-grandfather's property; the right by birth being ordained by law only where the son or grandson inherits the property of his father or grandfather.

Objector's argument.

11. This is true, but a great-grandson has been declared entitled to his great-grandfather's property, just on the same principle on which a son and the like have been declared entitled to their mother's property. This is simply because they survive[1] the deceased, and offer funeral oblations to her. It has hence been properly declared "Let his son[2] take the share."[3]

Reply.

(1). See chap. ix. sec. iii. para. 5.

(2). This is the son of the grandson of the deceased.

(3). The High Court, in their Judgment in Special Appeal No. 320 of 1864, remark that, in the provinces of Madras, the right to property and of consequence to partition does not accrue by descent but only by birth; and that, therefore, clause 13, sec. i. of the Limitation Act which refers to cases of right accruing by descent is inapplicable to the provinces of Madras. The Hindu Law, however, as expounded by the Smruti Chandrika, seems to be as follows:

I.—The right by birth is ordained by the law only where a son or grandson inherits the property of his father or grandfather—chap. viii. paras. 10 and 11.

II.—A daughter possesses an interest by birth in her father's property—chap. iv. para. 18, and chap. ix. sec. iii. para. 11.

III.—A wife, by reason of her marriage, possesses an ownership (though not of an independent character) in her husband's property—chap. ix. sec. ii. para. 14.

IV.—With the exception of the three instances above noted, the right of succession to the property of a Hindu *male*, accrues, in the case of all other heirs, such as great-grandson and the like only by descent—chap. viii. para. 11, and chap. ix. sec. iii. para. 5.

V.—In regard, however, to inheriting the property of a Hindu *female*, the right in the case of all heirs, including her own offspring, accrues without exception by descent—chapter ix. sec. ii. paras. 15 and 26, and sec. iii. paras. 4 and 5.

It is therefore a question whether, where a suit is brought to enforce a right to partition in the instances referred to in IV and V, clause 13, section i. of the Limitation Act does not apply to the provinces of Madras. See also note to chapter i. para. 23 of this treatise.

Conclusion.

12. It must hence be understood that whoever, by reason of the deceased proprietor being related to him as father, grandfather, or great-grandfather, offers funeral oblations to him, becomes entitled to participate in his (deceased's) property notwithstanding that the deceased has got other sons, grandsons, and the like.(1)

Partition of inheritable property is co-ordinate with the gifts of funeral cakes. Passage of Devala.

13. Hence, Devala :—" Sages declare partition of inheritable property to be co-ordinate with the gifts of funeral cakes."

Exposition of the passage.

14. The meaning is, that Menu and other sages contemplate the partition of inheritance as well as the presentation of funeral oblations to extend to the fourth(2) in descent.

Another passage of the same author.

15. Accordingly, the same author :—" Partition among parceners having undivided wealth [Avibhakta Vibakhtanam], and being members of the same family, and who have long lived together, shall extend to the fourth in descent. This is a settled rule. So far, [*i. e.* as far as the fourth in descent], kinsmen are sapindas, *i. e.* connected by funeral oblations. Beyond this, a difference occurs in the offer of funeral cakes."

Exposition of the passage.

16. Avibhakta Vibakhtanam] Among persons having undivided wealth.(3) Members of the same family] Belonging to the same family but sprung from different branches. Who have long lived together] Who have resided together for a considerable period. Partition shall extend to the fourth in descent] Partition shall be allowed as far as the great-grandson of the deceased owner. Thus stands the rule of partition of heritage among parceners sprung from different branches of the same family.

(1). Under this rule, a grandson whose father is dead, and a great-grandson whose father and grandfather are dead at the time the property falls in, inherit at once with any existing son.

(2). This is inclusive of the deceased.

(3). The author of the Smruti Chandrika construes the term "Vibhakta" into wealth. But the term is explained otherwise in II Digest, page 242.

17. If it be asked how, in the case of one whose father is alive, he obtains partition of his [deceased] grandfather's property with his father, Kátyáyana says: "Grandfather's property vests equally in both the son and father." Vyasa, too:—"A father and his sons are entitled to share equally the house and land descended from ancestors." Brahaspati, also:—"Of property acquired by the grandfather, whether moveable or immoveable, equal shares are ordained for both the father and the son."

How a son, whose father is alive, divides his grandfather's property with his father. Text of Kátyáyana.

Text of Vyasa.

Text of Brahaspati.

18. Yájñavalkya, on the same subject:—"The ownership of a father and son is the same in land which was acquired by the grandfather or in a corrody [Nibandha] or in a chattel [Dravyam] which belonged to him."

Text of Yájnavalkya on the same subject.

A corrody [Nibandha] (1) signifies a permanent allowance received from saleable articles, in virtue of an agreement or promise. The expression "The ownership of a father and son is the same" used in the above passage of Yájñavalkya, must be understood to mean that a father and son shall have equal shares. Otherwise, the import of the passage cannot agree with the texts previously quoted, namely, those of Kátyáyana, Vyasa, and Brahaspati.

Explanation of certain terms in the passage.

(1). The term corrody is construed, as follows, in the following works:—

I.—What is fixed by a promise in this form "I will give that in every month of Kartiky"—Jim. Vah. chap. ii. para. 13.

II.—Anything which has been promised, deliverable annually or monthly, or at any other fixed periods—Crikrishna.

III.—A fixed amount granted by the king or other authority receivable from a mine or similar fund—Kalpataru.

IV.—So many leaves receivable from a plantation of betel, pepper, or so many nuts from an orchard of areca—Mit. chap. i. sec. vi. para. 4.

V.—A fixed pension receivable out of mines or the like and settled on him and his heirs by the king or other benefactor—II Digest, page 258.

VI.—A grant of property, an assignment of cattle or money for support, a corrody. Fixed property, not moveable or fluctuating—Wilson's Dictionary.

Conclusion. Unequal partition of ancestral property could never be made.

19. The conclusion hence is that, even where a partition takes place during life-time of the father, an unequal partition could never be resorted to in the case of the wealth of the grandfather or the like; but, with regard to self-acquired property, that is, property acquired by the father, it has been pointed out in the chapter(1) treating of partition during life-time of the father, that unequal partition prevailed in some instances in former ages.

A partition of the grandfather's property takes place even at the will of the grandson only.

An undivided father cannot alienate ancestral immoveable property without the concurrence of his sons.

20. Some give the expression "The ownership of father and son is the same" used in the above passage of Yájñavalkya, the full force which the terms convey, and hold that a partition of the grandfather's property takes place even at the will of the grandson alone,(2) and that a father is not, of his own authority, competent,(3) to make a gift or the like of hereditary property; the grandson [of the deceased], in the case of such property, possessing an equal ownership with the father.(4) Such a construction is acceptable, it being pertinent, and Vishnu, too, declaring "In the case of grandfather's property, the ownership of a father and son is equal."

21. It would seem from the above construction that in

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(1). See chap. ii. sec. i. para. 8 of this treatise and Note.

(2). A grandson may, by Hindu law, irrespective of all circumstances, maintain a suit against his grandfather for compulsory division of ancestral family property.

Nagalinga Mudali *v.* Subramoneya Mudali and others—I M.H.C.R. 77.

(3). A sale by a father is valid by Hindu law to the extent of his own share of the undivided estate.

Palani Velappa Kaundan *vers.* Nannaru Naiken and another—II M.H.C.R. 416.

(4). According to the Bengal law, sons cannot enforce against their father partition of even the ancestral property. The act depends on the father's pleasure [J. V. i. 38, ii. 20]. A father, besides, may alienate a small portion of the ancestral immoveable property at his pleasure—[J. V. ii. 24].

the case of the father's property, the ownership of the father and son is unequal, [equality of ownership having been specifically ordained in the case of the grandfather's property alone]. But this gives rise to the question, how could there exist such an inequality while one possesses a right by birth in both his grandfather's and father's property? The reply, however, is that, in the case of the grandfather's property, the ownership [Svamiem](1) and also independent power [Svatantriem] (1) are both equal(2) in the father and son. Whereas, in the case of the father's property, while he is alive and free from defect, he [father] alone possesses independent power [Svatantriem](3) and not the son. Hence alone arose the stated difference.(4)

The ownership of the father and son is unequal in respect of the father's property and equal in respect of the property of the grandfather.

Reasons for the same.

22. Kátyáyana, however, says: "A son has no ownership [Svamiem] over the self-acquisition of the father."

Passage of Kátyáyana.

But this passage must be understood to indicate simply the incompetence of the son to enforce at his own will a partition of such property during the life-time of the father. It cannot be taken in its literal sense.(5) There is thus no contradiction.

How the passage is to be construed.

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(1). Vide chap. i. of this treatise for an explanation of the terms "Svamiem" and "Svatantriem."

(2). The father is not hence entitled to a double share of the ancestral property, when dividing it with his sons. See note to chap. ii. sec. i. para. 26 of this treatise.

(3). Vide chap. i. paras. 18 and 19 of this treatise.

(4). The difference is this: in one case, that is, in the case of the father's property, the ownership of the father and son is subject to inequality in point of independence; but in the other case, that is, in the case of the grandfather's property, it is not so. The father and son possess both an equal independent right.

(5). It cannot be taken in its literal sense, for, if the passage were to be construed literally, it would amount to asserting that a son has no ownership over his father's property during the life-time of the latter, but this is opposed to the settled law which vests in sons a right *by birth*.

23. Vyasa, on this subject, is explicit in his terms: "Sons cannot claim a partition of wealth acquired by their father against their father's will."

Sons cannot claim partition of the father's wealth against his will.

24. Brahaspati says:—"Over property descending from a grandfather but seized by strangers, which the father recovers by his own power, and over what the father has gained by science, valour, or the like, ownership [Svamiem] is declared to be in the father." Here too, the term "ownership" [Svamiem] must be understood, from the context of the passage, to mean independent power [Svatantriem].

Passage of Brahaspati.

How the term "Svamiem" used in the passage is to be construed.

25. The same author also defines independent(1) power: "He may give the wealth away at his pleasure or enjoy it himself [Bhogám(2) Kuréyat], but after his extinction, his sons are pronounced entitled to equal shares."

Independent power defined.

26. The purport of the above passage is that the father, even without his son's permission and on the strength of his own independence, is competent to make a gift or the like of his self-acquired property, or make an unequal(3) partition of it in the manner and in the instances described in the chapter treating of partition during life-time of the father.

A father possesses independent power over his self-acquired property during his life-time.

27. Kátyáyana points out, by the following passage, that sons cannot compel their father to divide with them such hereditary property as [by reason of its being

Sons cannot compel their father to divide with them his self-acquired property and also property ancestral

(1). See chap. i. paras. 21 and 22 of this treatise.

(2). There is another reading of this passage "Bhagám Kuréyat." He may make a partition of it, instead of "Bhogám Kuréyat," he may enjoy it himself. Opposed to both these readings, is the version of this passage in II Digest, page 256, in which it is said "He may withhold it from partition."

(3). This, however, prevailed in former ages. See the concluding part of para. 19 of this chapter.

that had been seized by others, but recovered by the father through his self-exertion. Text of Kátyáyana.

recovered] ranks as self-acquired, as well as the self-acquired property of the father.(1)

"Whatever property seized by strangers, a father recovers by his own exertions; whatever a father himself acquires, he need not give any such property in partition to his sons."(2)

Exposition of the text.

28. The meaning is, that which belongs hereditarily to the family but had been seized by strangers and recovered by the father through his self-exertion alone,(3) and that which was acquired by the father himself through science, valour, or the like, these the father need not give to his sons in partition.

SUMMARY (BY THE TRANSLATOR).

I. Son's sons and son's grandsons, whose fathers and grandfathers have died undivided, inherit not *per capita* (equally), but *per stirpes*; that is, according to the share of the person through whom they derive the inheritance.

II. This rule prevails even where the number of sons or grandsons by each father or grandfather [deceased] may be *unequal.*

III. A great grandson inherits, not in right of birth, but simply because he survives the deceased, and offers funeral oblations to him.

IV. The right of sons of deceased sons and of sons of deceased grandsons to inherit prevails even where the deceased has got other sons and grandsons surviving him.

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(1). This rule, of course, is subject to the exceptions noticed in chap. i. of this treatise, under which sons acquire independent power during life-time of the father, in certain instances of disqualification on the part of the latter, and make a partition of the family property at their own instance, irrespective of the will of the father.

(2). See chap. vii. páras. 32 to 38 of this treatise as to the rules of partition where a co-heir [not being father] recovers hereditary property.

(3). Through his self-exertion alone] The use of this expression gives room to infer that where the recovery is made with the assistance of the joint funds, the property recovered is divisible.

V. Beyond the great-grandson of the deceased, the inheritance does not descend.

VI. In the case of the grandfather's property, ownership [Svamiem] and independent power [Svatantriem] are both equal in the father and the son. Whereas, in the case of the father's property, ownership alone is equal in the father and the son, and independent power rests entirely with the father while he is alive and free from defect.

VII. Hence, even where a partition takes place during life-time of the father, an unequal partition could never be resorted to in the case of the wealth of the grandfather.

VIII. A partition of the grandfather's property takes place even at the will of the grandson alone.

IX. A father is not, of his own authority and without the concurrence of his sons, competent to make a gift or the like of ancestral property.

X. A father, without his son's permission, and on the strength of his own independence, is competent to make a gift or the like of his self-acquired property.

XI. Sons cannot compel their father to divide with them his self-acquired property, and also property which, though belonging hereditarily to the family, had been seized by strangers and recovered by the father through his *self-exertion.*

CHAPTER IX.

STRIDHANA, OR WOMAN'S PROPERTY.

SECTION I.

OF THE DIFFERENT DESCRIPTIONS OF STRIDHANA.

Menu enumerates six sorts of Stridhana.

1. Menu, in the first place, describes the different kinds of Stridhana, "What was given before the nuptial fire [Adhyágni], what was presented in the bridal procession [Adhyávábanika], what was given through affection, and what has been received by her from her brother, mother, or father, are denominated the sixfold property of a woman."(1)

Kátyáyana defines these several sorts.

2. Kátyáyana here details the meaning of the first hemistich of the above passage. "What is given to a woman at the time of her marriage near the nuptial fire is celebrated by the wise as woman's property bestowed before the nuptial fire [Adhyagni]. That gain which a woman receives while she is conducted from her father's(2) house[to her husband's dwelling] is instanced as the property of a woman, under the name of gift presented in the bridal procession [Adhyávábanika]. What has been given to her through affection by her mother-in-law or by her father-in-law or has been given to her at the time of making an obeisance at the feet(3) is denominated an affectionate present."(4)

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(1). As to the different readings of this passage, vide note to Jim. Vah. chap. iv. sec. i. para. 4, and note to Mit. chap. ii. sec. xi. para. 4.

(2). Another reading of this text as countenanced by the Ratnakara and Chintamani is paitrkat "from the parental [abode]" instead of pitur grhat "from the father's house"—vide note to Jim. Vah. chap. iv. sec. i. para. 6.

(3). At the time of making an obeisance at the feet] In the translation of Mitákshara, the phrase "as a token of respect" has been used in lieu of these words—Mit. chap. ii. sec. xi. para. 5.

(4). Denominated an affectionate present] This reading is followed in Viramitrodya, &c. But the Ratnakara, Chintamani, and Vivada Chandra, read "an acquisition through loveliness." Lávanyárjitam, instead of Priti dattam, "an affectionate present."

What has been received by her from her brother, mother, or father]. Add to these words "occasionally on account of subsistence."

Menu's enumeration of six sorts is not to be taken as a restriction of a greater number but as a denial of a less.

3. The term "sixfold" has been used in the above text of Menu to avoid the supposition that what has been enumerated in the second hemistich of the passage are the *only* sorts of Stridhana.(1) It is not to be taken as a restriction of a greater number [but as a denial of a less]. Therefore,

Yájnavalkya's description of Stridhana.

Yájñavalkya, in the passage "What was given to a woman by the father, the mother, the husband, or a brother, or received by her at the nuptial fire, or presented to her on her husband's marriage to another wife [A'dhivedanika], as also any other [separate acquisition], is denominated a woman's property,"(2) has made use of the suppletory term Adya, "any other [separate acquisition"].

Stridhana is of various sorts as enumerated by Vishnu.

4. Vishnu describes more than six kinds of Stridhana. "What has been given to a woman by her father, her mother, her son, her brother, what has been received by her before the nuptial fire, what has been presented to her on her husband's espousal of another wife (A'dhiveda-

(1). The second hemistich of the passage of Menu (cited in para. 1) commences with "what has been received by her from her brother, mother, or father," &c. and contains an enumeration of only three kinds of Stridhana. To avoid the supposition that these three are the only kinds of Stridhana, and to show that the three kinds described in the first hemistich class also as Stridhana, the term "sixfold" has been used at the conclusion of the passage.

(2). As also any other separate acquisition] In Jimuta Vahana's quotation of the text (chap. iv. sec. i. para. 13) the conjunctive and pleonastic particles chaiva [cha-eva] are here substituted for the suppletory term Adya. That reading is censured by Balambhatta. See note to Mit. chap. ii. sec. xi. para. 1.

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nika),(1) what has been given to her by kindred, as well as her perquisite (Çulka),(2) and a gift subsequent (Anvádheyika), all these constitute a woman's separate property.

Certain terms in the passage of Vishnu, explained.

A'dhivedanika] What is given to the first wife as a compensation for the supersession. What has been given to her by kindred] The word "kindred" in this phrase refers to kindred, not being a father or any other above expressly mentioned. This is on the analogy of the phrase "Beeves and Oxen."(3)

Kátyáyana defines Culka and Anvádhéya.

5. Kátyáyana defines, as follows, the terms Çulka and Anvádhéya:—"Whatever is received as the price of household utensils, of beasts of burthen, of milch cattle, or ornaments of dress or for works(4) is called perquisite (Çulka). What has been received by a woman at a time subsequent to marriage from the family of her husband or from the husband or parents, Bhrugu pronounces to be a

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(1). Yájnavalkaya describes A'dhivedanika: "to a woman, whose husband marries a second wife, let him give an equal sum (as a compensation) for the supersession, provided no separate property have been bestowed on her; but, if any have been assigned, let him allot half"—Mit. chap. ii. sec. xi. para. 34; see also Montriou, Note ix., Morl. Dig. 596. She may sue her husband for it—S. H. L. B. page 98, Note.

(2). Culka properly signifies price: though it has become necessary to translate it fee, perquisite, or gratuity—see note to Jim. Vah. chap. iv. sec. iii. para. 20. In Mit. chap. ii. sec. xi. para. 6, Culka is described to be "the gratuity for the receipt of which a girl is given in marriage." Ratnakara defines Culka to be "wealth given to a maiden on account of soliciting her in marriage."

(3). "Beeves," though a generic term, must, in this instance, necessarily exclude "Oxen," which has been distinctly mentioned.

(4). Jimuta Vahana's reading is Karminam "workmen," instead of Karmanam "works." Note to Jim. Vah. chap. iv. sec. iii. para. 19. The whole of this passage is translated differently in II Digest, page 588.

gift subsequent "Anvádhéya."(1) Price] Price of household utensils, &c. Received (used in the definition of Çulka)] Received from the bridegroom or the like as the bride's wealth and in trust for the bride.(2)

Certain terms in the passage of Kátyáyana, explained.

6. On the subject of gift of property to a woman by a father, mother, or the like, for the sake of subsistence, the same author further says "Separate property, excepting immoveables, is to be given to a woman by her father, mother, husband, brother, or kindred, according to the means of each, as far as two thousand.

Passage of the same author on the subject of gift to a woman by her father, mother, or the like.

7. The meaning is, that the wealth to be given is to be exclusive of immoveable property, and that the gift may extend to two thousand Karsha Panas.(3)

Exposition of the text.

8. Vyasa, too:—" A present amounting to two thousand at the utmost [Paro] may be given [dayah] to a woman out of the wealth.(4)

Text of Vyasa on the same subject.

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(1). Anvádhéya. From Anu 'after' and Adhéya 'to be received.' This gift is defined in different ways by different authors:—

I.—What has been received by a woman at a time subsequent to her marriage from the family of her husband is called a gift subsequent, and so is that which has been similarly received from her own family—Vy. May. chap. iv. sec. x. para. 3; Mit. chap. ii. sec. xi. para. 7.

II.—Whatever is received by a woman after her nuptials either from her husband or from her parents through the affection of the giver, Bhrugu pronounces to be a gift subsequent—Jim. Vah. chap. iv. sec. iii. para. 18.

III.—What is received by a woman after marriage from the kinsmen of her lord or from those of her parents is called a gift subsequent—II Digest, page 587; see also chap. ix. sec. iii. para. 2 of this treatise in which a gift subsequent is defined differently by Kátyáyana himself.

(2). See note to Jim. Vah. chap. iv. sec. iii. para. 19.

(3). Pana is a copper coin, equal in weight to the Karsha [of 16 Mashas], whence the copper pana is denominated Karshika [of the Karsha standard] in Dictionaries. One Karsha is the fourth part of a Pala. And when there are twice ten Kauris, their amount or joint-weight is called one Kakini, four of which make one Pana. This is the table of the Pana standard, according to Bhaskara Acharya—Vy. May. chap. xxii. para. 4.

(4). Of the various readings of this text, as noticed in the note to Jim. Vah. chap. iv. sec. i. para. 10, the author of the Smruti Chandrika adopts the reading which stands " Dvisahasra-paro-dayah."

May be given "dayah." This is derived from the verb "to give" [Deeyata-Iti-Dayah].

Paro] The utmost.

Property worth more than two thousand Panas is not to be given to a woman even by the wealthy, for her subsistence.

9. It is hence to be understood that property worth more than two thousand Karsha Panas is not to be allotted to a woman even by the wealthy, for the sake of her subsistence.(1)

The payment is to be made annually, but where the payment is made once for all, the restriction does not apply.

10. With reference to the amount of gift so fixed, it is to be gathered that the payment is to be made every year, and that to such payment alone the rule in question is applicable. Where, however, a payment is made, once for all, to meet the charges of subsistence for several years, neither the restriction of amount as above shewn, nor the prohibition against the gift of immoveable property applies.

Conditional or fraudulent gifts are not to be classed as Stridhana. Text of Kátyáyana.

11. Ornaments or the like given to a woman on condition that they are to be worn only on occasions of festivals, &c., as well as property given with a view of defrauding the co-heirs, will not constitute Stridhana or separate property of a woman, for, Kátyáyana thus declares: "But whatever has been given conditionally or with a fraudulent design by the father, brother, or husband, is declared not to be Stridhana or woman's property."

Objector's argument.

12. The objector says:—A gift made by the father or the like does not become Stridhana or woman's property, even where it is made unconditionally and without a fraudulent design; for, there is the text "A wife, a son, and a slave are all incapable of property [Nirdhana]: the wealth which they may earn is the wealth of the man to whom they belong."

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(1). As for the rate of maintenance payable to a widow, see chap. xi. sec. i. para. 39 of this treatise.

13. Reply, this is not so. As the word "wife" has been used in the passage above quoted with the words "son, &c.," it must be understood that it is not thereby intended to declare a woman to be actually incapable of property [Nirdhana], as, in that case, the incapability in question would also apply to a son, which is quite opposed to law. The passage is simply indicative of the want of independent power of a woman to make expenditure or the like from the wealth. The spirit of the passage must hence be understood to be that a wife and others cannot make expenditure even of their separate property without the permission of him to whom they belong.

Reply.

14. Menu, therefore, says :—" Woman should never make expenditure [Nirhâram] from the wealth of the family common to many, inclusive of themselves, or even from their separate property, without the permission of their respective lords."(1)

Passage of Menu against the power of woman to make expenditure or the like.

15. The meaning is, that women who are naturally wanting in independence cannot, of their own choice, make disbursements, use, or the like of property belonging in common to themselves and their husbands, or of property belonging to them exclusively.(2)

Exposition of the passage.

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(1). This text is translated in Vy. May. as follows :—"A woman should never make expenditure from the goods of her kindred [which are] common to [her and] many; or even from the property of her lord without his assent"—chap. iv. sec. x. para. 8.

In II Digest, page 593, the translation of the text runs as follows: "A woman should never make a hoard from the goods of the kindred *which are* common *to her and* many; or even from the property of her lord, without his assent."

But neither of these translations agrees with the Sanskrit verse as quoted in the Smruti Chandrika.

(2). For exceptions to this rule, see chap. ix. sec. ii. paras. 3 and 4 of this treatise.

16. Or the passage "A wife, a son and a slave are all incapable of property [Nirdhana] &c." (paragraph 12), may be taken as relating to the wealth earned by a woman by mechanical arts or the like; for, in respect of such wealth, Kátyáyana says: "The wealth which is earned by mechanical arts or which is received through affection from others, is always subject to her husband's dominion. The rest is pronounced to be the woman's property Stridhana."

What a woman may have obtained by her own exertions or by gift from other than her relations ranks not as her property but her husband's. Text of Kátyáyana.

From others] From friends or the like. This is so to be construed, for, it has already [paragraph 4 of this section] been noticed that whatever is received from the father or the like is a Stridhana.(1)

SUMMARY (BY THE TRANSLATOR).

I. Stridhana, or the separate property of a woman, is of the following descriptions:—

I. Adhyagni, or what is given to a woman at the time of her marriage near the nuptial fire.

II. Adhyávahanika, or what a woman receives from her mother, father, or the like, while she is conducted from her father's house to her husband's dwelling.

III. What is given to a woman through affection by her mother-in-law or father-in-law.

IV. What is given to a woman at the time of her making an obeisance at the feet.

V. What is received by her from her brother, mother, father, or son.

VI. What is given to her by her husband.

(1). It would appear from the whole of this chapter, in which the different kinds of Stridhana are defined, that property devolving on a woman by inheritance is not classed as Stridhana. According to Mit., however, property acquired by inheritance ranks as Stridhana, but this doctrine is questioned by the High Court in their Judgment in S. A. No. 81 of 1865 [Madras High Court Reports, vol. ii. page 402], in which they observe that property devolving on a woman by inheritance is not Stridhana and does not follow the law of succession peculiar to properties of that kind. Vide also on this subject note to chap. xi. sec. iii. para. 8 of this treatise.

vii. A'dhivedanika, or what is given to her on her husband's marriage to another wife.

viii. What is given to her by kindred, not being the father, or any other kindred expressly mentioned above.

ix. Çulka, or what is received from the bridegroom or the like as the price of household utensils, of beasts of burthen, of milch cattle or ornaments of dress, or for works. This is received as the bride's wealth and in trust for the bride.

x. Anvádhéya, or what is received by a woman at a time *subsequent* to marriage from the family of her husband or from the husband or parents.

II. Where a father, mother, husband, brother, or kindred makes a present to a woman for the sake of her subsistence, it is to be exclusive of immoveable property and is not to exceed two thousand Karsha Panas, even where the payment is made by the wealthy. These restrictions, however, do not apply where the payment is made once for all to meet the charges of subsistence for several years.

III. The following descriptions of property do not constitute Stridhana or the separate property of a woman. They are always subject to her husband's dominion :—

i. Ornaments or the like given to a woman on condition that they are to be worn only on occasions of festivals, &c.

ii. Property given to a woman with a view to defraud co-heirs.

iii. Wealth earned by a woman by mechanical arts.

iv. Wealth received by a woman from friends or the like.

IV. Women, being naturally dependent, cannot, of their own choice, and without the permission of him to whom they belong, make disbursements, use, or the like, of their separate property (excepting however Saudáyika, as shewn in the next section).

CHAPTER IX.

SECTION II.

DOMINION OVER STRIDHANA, OR SEPARATE PROPERTY OF A WOMAN.

Vyasa declares that a woman may consume as she pleases what was given to her by her husband.

1. Vyasa :—" What has been given to a woman by her husband, she may consume as she pleases."

Exposition of the text.

2. The author points out by the above text, the independent power of a female over what was given to her by her husband, after having, by the particle " Cha" used in the text, hinted the absolute dominion of a female over such kind of wealth also as is called " Saudáyika."

The wife has sole power over Saudáyika, but over her husband's donation she acquires independent power only after the demise of her husband. Text of Kátyáyana.

3. Kátyáyana, too, on the subject :—" The independence of women who have received the gifts termed " Saudáyika" is recognized in regard to that property, for, it was given to soothe them, and for their maintenance. The power of women over " Saudáyika" is *ever* celebrated, both in respect of donation and of sale according to their pleasure, even in the case of immoveables.(1) Let the woman place her husband's donation as she pleases, when he is deceased; but while he lives, she should carefully preserve it."(2)

Exposition of the text of Kátyáyana.

4. By the use of the word " ever" in the second of the above texts, it is understood that a woman possesses independent power over the Stridhana termed Saudáyika even during the lifetime of her husband. In regard, however, to the husband's donation, that is, what was given by the husband, she is

(1). See I M.H.C.R. 87.

(2). See note to Jim. Vab. chap. iv. sec. i. para. 8, as to the different interpretations adopted of this text.

declared by the three quarters of the Çloka immediately following the second text above noticed, to acquire independent right only after the demise of her husband. But while he lives, she is incompetent to dispose of what was given to her by him without his permission. She is only bound to preserve it; it being declared, at the conclusion of the above passages, that "She should carefully preserve it."

The same author defines Saudáyika.

5. The same author [Kátyâyana] also defines Saudyáika, "That which is received by a married woman or by a maiden in the house of her husband, or of her father, from her brother or from her parents, is termed the gift of affectionate kindred [Saudáyika]."(1)

That which is received] The wealth that is received.

Vyasa's definition of Saudáyika.

6. Vyasa, accordingly:—"Wealth which is received by a woman either at the time of or subsequent to, marriage from(2) the house of the father or husband is denominated "Saudáyika."

Author's interpretation of the passages of Kátyáyana and Vyasa.

7. Both the foregoing passages tend to show that Saudáyika is the wealth called "Yautaka,"(3) or the like, received by a

(1). This reading of the text is conformable to the quotation in Mit. and Vyasa May., but Jimuta Vahana reads "from her husband," [Bhartuh] instead of "from her brother" [Bhratuh]. Another variation occurs in the first verse of this stanza, read by Chandecvara, Kanyayá sárdham "with a maiden" instead of Kanyayâ vapi "or by a maiden." It is censured as an erroneous reading by Vachespati Micra; see note to Jim. Vah. chap. iv. sec. i. para. 21.

(2). The preposition "from" must, I think, mean in this instance "in;" Saudáyika being defined in paras. 5 and 7 to be a gift made by the woman's own kindred, whether in the house of the husband or her father.

(3). The word "Yautaka" is, in the Nighantu, derived from their [husband and wife] being then joined together [Yuta]—Vy. May. chap. iv. sec. x. para. 17. "Yautaka" signifies property given at a marriage, the word yuta, derived from the verb "Yu" to "mix," imports "mingling;" and mingling is the union of man and woman as one person—and that is accomplished by marriage, for, a passage of Scripture expresses: "Her bones become identified with his bones, flesh with flesh, skin with skin." Therefore, what has been received at the time of the marriage, is denominated "Yautaka"—Jim. Vah. chap. iv. sec. ii. para. 14, vide also Note. As for the definition of yautaka by the author of the Smruti Chandrika, see chap. ix. sec. iii, para. 13.

woman from her own parents or persons connected with them in the house of either her father or her husband, from the time of her betrothment to the completion of the ceremony to be performed on the occasion of her entering her lord's house.

Objector's argument against the use of the term "Saudáyika."

8. The objector here says, it is stated in the Nighantu [Dictionary] that "Whatever 'yautaka' or the like is given, is called 'Sudáya' and it is the absolute property of a female." How then is it called here "*Saudáyika*"?

Reply.

9. The reply is that, according to grammar, "Saudáyika" bears the same sense with its etymon "Sudáya."

A woman does not possess independent power over immoveable property given to her by her husband. Text of Nareda.

10. Over immoveable property, however, given to a woman by her husband, she does not possess independent power. Nareda, accordingly:—"What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immoveable property."(1)

Explanation of the text.

11. The purport of the above passage is, that a wife possesses no independent power over immoveable property given by her husband, even after his demise.

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(1). The author of a commentary, to which is affixed the name of Raghunandana, remarks in this place, 'Hence it is true, that a woman is entitled to give away even immoveable property received by the demise of her husband.' As the doctrine which is here hinted, is opposed by the whole current of authorities, and receives no countenance from Raghunandana himself, in his undoubted work the Day-tatva, this passage cannot be considered as of weight to shake the opposite doctrine, which denies the widow's right of alienation unless under very peculiar circumstances. The authenticity of the commentary itself, as a work of Raghunandana, is more than doubtful. It is of no celebrity and is suspected to be the work of some later writer, who has assumed Raghunandana's name and designation. See note to Jim. Vah. chap. iv. sec. i. para. 23.

By the words "as she pleases" used in the above text of Nareda, the liberty of the woman over property other than immoveables is shewn.

Conclusion.

12. From all the foregoing, it must be concluded that women possess independent power only over Saudáyika(1) and over their husband's donation excepting immoveables, and that their power is not independent over other sorts of property although they may be Stridhana.(2)

Husband and the like possess no independent power over Stridhana. Text of Kátyáyana.

13. As for the husband and the like, they possess no independent power over any sort of Stridhana, for, Kátyáyana says:—"Neither the husband, nor the son, nor the father, nor the brothers can assume the power over a woman's property to take it or bestow it." This is because the husband and others possess no ownership over such property. Hence the same author continues:—"If any one of these persons by force consumed the woman's property, he shall be compelled to make it good with interest and shall also incur a fine. If such person having obtained her consent, used the property amicably, he shall be required to pay the principal when he becomes rich."

Text of the same author as to how persons using Stridhana forcibly or otherwise are to be dealt with.

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(1). I think that Saudáyika and Yautaka have not been separately noticed in the preceding section (sec. i. chap. ix.), as they are included in the different descriptions of Stridhana therein given.

(2). The High Court in their Judgment in Doe on the demise of Kallamma against Kuppu Pillai [M.H.C.R. vol. i. page 85], have ruled that a Hindu wife or widow may alienate her Stridhana, whether it be moveable or immoveable, with the exception perhaps of land given to her by her husband. In a subsequent Judgment, however, [S. A. No. 6 of 1865, M.H.C.R. vol. ii. page 360] the High Court observe that they could not, without the greatest consideration, conclude that a woman can, without the consent of her husband during coverture, absolutely alienate even her own landed property.

Inferences deducible from the above text of Kátyáyana.

14. From its being mentioned that the principal is payable when he becomes rich, it is inferrible that the re-payment of even the principal is not necessary in the case of a poor man. It also appears from re-payment of the principal being enjoined even where Stridhana is used with permission, that the husband and the like are wanting not only in independent power, but also in ownership over Stridhana. It must hence be understood that in a husband's property, the wife, by reason of her marriage, possesses always ownership, though not of an independent character, but that the husband does not possess even such ownership in his wife's property.

Passage of Devala against the competency of the husband to use his wife's Stridhana, unless in distress.

15. Hence Devala declares, by the following passage, that the husband is not competent even to use the Stridhana of his wife. "Her subsistence [Vrtti],(1) her ornaments, her perquisite, and her gains [Lábham] are the separate property of a woman. She herself exclusively enjoys it, and her husband has no right to use it unless in distress. If he let it go in vain, or consume it, he must re-pay the value to the woman with interest." Vrtti] Wealth given by the father or the like for subsistence. Lábham](2) That which is gained is Lábham. [Labheyata Iti Lábhah]. Under this definition, that which a woman receives on occasions of fastings, &c. as an offering to gratify "Parvati" or other goddess, classes also as Stridhana.

Explanation of certain terms in the passage.

(1). In a note made in Mr. Stoke's Hindu Law Books, at the foot of para. 15, sec. i. chap. iv. of Jim. Vah., it is stated that the term "Vrtti" is read "Vrddhi" in the Smruti Chandrika, and is interpreted "Wealth given by the father or other person for increase of prosperity." I, however, find no such reading in the several copies of the Smruti Chandrika in my possession. The term Vrtti has been interpreted in them as "wealth given for subsistence."

(2). At the present day where the woman's dower is high, it is put out at nterest, which is the meaning given to gain, by Jim. Vah. and his commentators—Jim. Vah. chap. iv. sec. i. para. 15 and Note.

The pronoun "herself" has been used after "she," in the above passage, in order to show that the property is to be enjoyed by the woman even to the exclusion of her offspring. As for the exclusion of the husband, that has been expressly provided for by the sentence "And her husband has no right to use it." The husband himself being excluded, the exclusion of the other relatives such as brother, or the like, is inferrible by the analogy of the loaf and staff.(1)

In vain] On occasions when there is no distress.

If he let it go] If he gives it away.

Passage of Devala applicable to a case where the husband gives away or consumes his wife's Stridhana without her permission but without force.

16. The above passage of Devala is applicable to a case where a husband gives away or consumes his wife's Stridhana without her [wife's] permission *but without force*. This is inferrible from the circumstance that no injunction of penalty, such as fine, is annexed to the direction contained in the passage that the value of the property must be re-paid to the woman with interest.

In time of distress, the husband alone and none else is competent to use Stridhana.

17. By the sentence "Her husband has no right to use it *unless in distress*" in the above passage of Devala, it would appear that, in time of distress, the husband alone is competent to use the woman's property and none else.

A subsequent passage of Devala construed in conformity with the above interpretation.

18. Therefore, in the subsequent text of the same author. "Or the property of a woman may be used to relieve a distressed son," the words "by the husband" must

(1). This example of analogy, to which frequent allusion is made in argumentative writings, is variously stated. According to one explanation, the reasoning exemplified by it, is analogy drawn from association. According to another, it is an argument *à fortiori*. A loaf having been left suspended on a staff, the loaf is missing, and the staff is observed to have been gnawed by rats: it is concluded that the loaf has been devoured by them. A staff being thrust through loaves, these are necessarily brought by bringing the staff. See also notes to chap. xi. sec. ii. para. 17, and chap. xi. sec. v. para. 4 of this treatise.

be understood after the words "may be used." The term "son" has been used to denote any member of the family. The distress referred to must be of such a character as it is impossible to get rid of, except with the use of Stridhana.

Nature of the distress justifying the appropriation of Stridhana.

To relieve] To save. By the particle "Va" [or], being used in the above passage, it must be understood that, on other occasions also of extreme distress incapable of being obviated except with the use of Stridhana, the husband is competent to use or give it away though he may not have obtained the permission of his wife for the same.

Explanation of certain terms in the above passage of Devala.

19. The objector here asks how could competency be declared in a man to use or give away another's property without the permission of such other person.

Objector's argument.

20. The reply is that, even should the permission of the owner be wanting, where the owner is one [as a wife] subject to the control of the party requiring the Stridhana, although he is not competent to alienate the property at will, yet his competency to use or consume it with the view of getting rid of a distress has been expressly sanctioned by the passage above quoted. Hence, there is no illegality in the matter.

Reply.

21. Yájñavalkya on the subject :—"A husband is not liable to make good the property of his wife taken by him in a famine or for the performance of a duty or during illness or while under restraint."

Passage of Yájnavalkya on the subject.

For the performance of the duty] Whether the duty be performable daily or occasionally. The particle "Cha" used in the text tends to show that the duty contemplated refers also to a temporal duty [Kamiem] and, in some instances, to expiatory

Exposition of the passage.

ceremonies, such as "Graha Yájña" or the like. While under restraint] While under the coercion of creditors or the like, which it is impossible to get rid of without payment of money. Taken by him] Taken by him under circumstances leaving no alternative. After the sentence "A husband is not liable to make good," add the words "Where he has no means to re-pay the amount, as in the case of poverty." When he acquires means, it is necessary that he should re-pay what he has taken out of the Stridhana.

Re-payment of Stridhana not imperative in certain instances according to Kátyáyana.

22. Kátyáyana, in some instances, declares re-payment not to be imperative. "Whatever has been knowingly permitted through affection to be taken by one afflicted by disease, suffering from grief or sorely pressed by creditors, he may re-pay it whenever it is his will to do so."(1) Knowingly] The knowledge referred to must be of the wife. Permitted] Allowed.

Passage of Kátyáyana applicable to husband alone.

23. Although this passage, from being placed in the Smruti of Kátyáyana next to the three stanzas "Neither the husband, nor the son, &c., para. 13," would lead to the supposition that it is applicable to the husband and others also, yet a consideration of the texts following the passage, shews that the passage in question is applicable to the husband *alone*. The texts are, "But if the husband have a second wife, and do not show honour to his first wife, he shall be compelled by force to restore the property, though amicably lent to him. If suitable food, raiment, and dwelling be withheld from the woman, she may exact her own (property)."(2)

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(1). This text has been translated, as follows, in II Digest, page 594:— "Whatever she has put amicably into the hands of her husband afflicted by disease, suffering distress, or sorely pressed by creditors, he should re-pay that by his own free will." But this translation does not seem to me to be literal.

(2). Here the term "Svam" has been used in the text. As to the different interpretations of this term, see note to Jim. Vah. chap. iv. sec. i. para. 24.

24. Where, however, the woman is extremely wicked, even if she had not permitted the use of her separate property [as above noticed], she is herself incompetent to use it, for, the same author [Kátyáyana] says :—"But a wife who does malicious acts injurious to her husband, who has no sense of shame, who destroys the wealth, or who takes delight in being faithless to his bed, is held unworthy of Stridhana or separate property."(1) Unworthy] Unworthy to alienate at will.

A wicked woman incompetent to use Stridhana. Text of Kátyáyana.

25. A Stridhana promised by the husband [but not accepted by the wife during his life-time] must be paid to her afterwards. Accordingly, Kátyáyana :—"What was promised to a woman as her Stridhana by her husband must be delivered by his sons like a debt." The word "son" includes also the grandson.

A Stridhana promised but not paid to the wife, must be paid to her on her husband's decease. Text of Kátyáyana.

26. By the use of the words "like a debt," it will be seen that this passage also tends to show that sons and the like possess no ownership whatever over the Stridhana of their mother. Hence it is settled that there is no partition of Stridhana during the life-time of the woman, she herself being the exclusive owner of it.(2)

Sons and the like possess no ownership over Stridhana.

Stridhana impartible.

27. Therefore, Menu :—"Their kinsmen who take their goods in their life-time, a virtuous king should chastise by inflicting the punishment of theft. Such ornaments as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves: they who do so are degraded from their tribe."(3)

Passage of Menu against the appropriation of Stridhana by kinsmen.

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(1). Vide chap. xi. sec. i. para. 47, where this passage occurs.

(2). Vide chap. iv. para. 11, and chap. vii. para. 22 of this treatise.

(3). See Judgment of High Court in S. A. No. 6 of 1865 (M.H.C.R. vol. ii. page 60), in which this principle is recognized.

28. As are worn]. Here the word "constantly" must be added; for, constant wearing raises the presumption that the ornaments worn are Stridhana, and excludes every hypothesis of fraudulent motive. As the above passage refers to property positively ascertained to be Stridhana, it must be understood that constant wearing is essential to constitute such property. Kinsmen] Daughter's son and the like.

Explanation of certain terms in the passage.

Summary (by the Translator).

I. Wealth received by a woman from her own parents or persons connected with them, in the house of either her father or her husband from the time of her betrothment to the completion of the ceremony to be performed on the occasion of her entering her lord's house, is termed "Saudáyika."

II. Saudáyika includes also "Yautaka" (wealth given to the bride and bridegroom while seated together at a marriage or the like).

III. Women possess independent power over Saudáyika in respect of donation, sale, &c. according to their pleasure, even in the case of immoveables.

IV. What was given to a woman by her affectionate husband, she must carefully preserve during his life-time. She is incompetent to dispose of it without his permission. On his demise, however, she acquires independent power over it. But this rule is inapplicable to gifts of immoveable property, over which she never acquires independent power, even after the demise of her husband.

V. Subject to the exceptions noticed in the foregoing two paragraphs, women possess no independent power over Stridhana.

VI. A husband possesses neither ownership nor independent power over his wife's Stridhana, but a wife, by

reason of her marriage, possesses always ownership, though not of an independent character, over her husband's property.

VII. If either the husband, the son, the father, or the brother, consume woman's property by force, he shall be compelled to make it good with interest and shall also incur a fine. If, however, he uses the property with her consent, he shall be required to pay the principal when he becomes rich. If, without becoming rich, he continues always a poor man, the re-payment of even the principal is not necessary.

VIII. If a husband gives away or consumes his wife's Stridhana without her permission, but without force, he will have simply to re-pay it with interest, and will incur no penalty.

IX. In time of distress, however, the husband will be competent to use his wife's Stridhana, but this privilege belongs exclusively to the husband.

X. The distress must be of a character impossible to get rid of, except with the use of Stridhana.

XI. On such an occasion, the husband is competent to use his wife's Stridhana even *without her permission*.

XII. He must, however, re-pay the amount unless where he is destitute of means to do so, in which case he will be exempted from making the payment until he becomes sufficiently rich.

XIII. Where a wife knowingly permits her husband in distress to make use of her Stridhana, he may re-pay it whenever it is his will to do so.

XIV. If the husband have a second wife and do not show honour to his first wife, he shall be compelled by force to restore the property of the atter (first wife), though it had been amicably lent to him by her.

XV. If suitable food, raiment, and dwelling, be withheld from a woman, she may exact her own property.

XVI. An extremely wicked woman is not competent to use her Stridhana.

XVII. What a woman gains on occasions of fastings, &c. as an offering to gratify goddess, ranks also as Stridhana, and it is termed "Lábham."

XVIII. Stridhana is to be enjoyed by a woman even to the exclusion of her offspring.

XIX. Sons and the like possess no ownership whatever over their mother's Stridhana during her life-time.

XX. A woman is the exclusive owner of her Stridhana, and no partition of it takes place during her life-time.

XXI. Stridhana promised by the husband but not accepted by the wife during his life-time, must be paid to her on the demise of her husband by his sons and grandsons, like a debt.

XXII. Kinsmen appropriating the separate property of a woman are liable to punishment.

CHAPTER IX.

SECTION III.

SUCCESSION TO WOMAN'S PROPERTY.

Anvádheya and affectionate gift by husband are inherited by her children, even where the woman dies during the life-time of her husband.

1. Menu :—" What she received after marriage(1) (Anvádheya), and what her lord may have given through affection (Priténa), shall be inherited, even if she die in his life-time, by her children (Praja)."

Anvádheya, defined. Passage of Kátyáyana.

2. Anvádheya is wealth received by a woman subsequent to marriage from the family of her husband or from the family of her father; it being declared by Kâtyâyana, " What has been received by a woman from the family of her husband, at a time posterior to her marriage, is called a gift subsequent (Anvádheya); and so is that which is similarly received from the family of her father."(2)

The compound term Anvádheya, analyzed.

3. In disjoining the compound term " Anvádheya," anu-adheya is obtained. The sense of anu 'after' is explained by what has been said in the text, " at a time *posterior* to her marriage," and of adheya 'to be received' by the word " received " used in the text.

(1). In Menu, chap. ix. verse 195, the words " from the family of her husband" have been inserted between " after marriage" and " and what her lord may have given through affection." But I have omitted the words, as they are not to be found in the original text as quoted in the Smruti Chandrika, and as the term " Anvádheya," as used in the text, is defined in the subsequent paragraph of this work to be " wealth received from the family of either the husband or the father."

(2). The same author (Kátyáyana) gives a different definition of Anvádheya; see chap. ix. sec. i. para. 5 of this treatise.

Exposition of the text of Menu, cited in para. 1.

4. The purport of the passage is, that Anvádheya and what was given through affection by the husband alone (Priti-datta), both these kinds of Stridhana, on the demise of the woman who was the owner thereof, become the property of her children, male and female, that live at the moment next succeeding that of the demise of the woman. Hence, the property of a woman leaving children will not be inherited by the husband, even though he survives her, but only by the surviving children of the woman.

It is by survival alone that an heir inherits Stridhana, as also property of other descriptions devolving on him by reason of the demise of the owner.

5. From the foregoing, it would appear that survival is the only circumstance recognized by law as creating a right to inherit the property of a deceased woman. (1) Therefore, wherever the property of one dying without issue devolves on another by reason of the demise of the proprietor,(1) survival alone is considered as conferring a right on the inheritor to inherit the property of the deceased.

Both the male and female children succeed simultaneously to Anvádheya and Priti-datta according to the passage of Menu, as cited in para. 1.

6. By the mention of the common term "children," in the above text of Menu, it is understood that both the male and female children acquire, at one and the same time, a right to inherit the two kinds of Stridhana referred to in the text, namely, Anvádheya and Priti-datta; and that the property therefore descends simultaneously to them, and not first to daughters, and on failure of them,

The daughters and sons must divide the property among them.

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(1). The great difference between the right of succession of a son and the like to a maternal estate and that to a paternal one is this. In the latter, the son acquires an interest *by birth* and possesses, in certain instances, a right even to compel division of the property during life-time of the father. Whereas, in the former, the son acquires no right whatever till the demise of the mother. See note to chap. viii. para. 11 of this treatise.

(4). This refers to a proprietor, male or female. See also chap. viii, para. 11 of this treatise, and Note.

to sons. The daughters and sons, or in other words, the brothers and sisters, must therefore divide the property among them. It must hence be understood that the passage of the same author [Menu], "When the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate,"(1) is applicable to the two descriptions of Stridhana [Anvádheya and Priti-datta] mentioned by himself in the preceding passage.

Another passage of Menu applicable to the two kinds of Stridhana.

7. On the same subject, Brahaspati notices a distinction; "A woman's property goes to her children [male] and the daughter also is a sharer with them, provided she be unaffianced; but if married,(2) she receives a mere token of respect."(3)

Unaffianced daughter alone is entitled to participate according to the passage of Brahaspati.

8. In the above passages of Menu and Brahaspati, the conjunctive particle "Cha" is used to indicate reciprocation [itaretara]. It is therefore to be understood that partition takes place among them [brothers and sisters] on principles of reciprocity. In other words, brothers and sisters share together.(4)

Brothers and sisters share together.

9. Hence Kátyáyana: "Sisters having husbands shall share with kinsmen."

Passage of Kátyáyana on the subject.

"Kinsmen" means brothers by the same mother. The words "having husbands" were used in the text, in order to exclude

Exposition of the passage.

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(1). In the Kalpataru, the text is read "Let all the sons by the same mother divide" sarve putrah sahodaráh; instead of "Let all the uterine brothers...... equally divide" samam sarve sahodaráh; see note to Mit. chap. ii. sec. xi. para. 19.

(2). This, I think, must mean a widow, for, in the following passage of Kâtyáyana, sisters having husbands are declared entitled to share with the brothers.

(3). The close of the stanza is read differently by Jim Vah., nalabhen mátrikan dhanam, 'She shall not receive the maternal wealth' instead of labhat mána-matrakam "She receives a mere token of respect." But it is disapproved. Vide note to Jim. Vah. chap. iv. sec. ii. para. 3.

(4). This is controverted by Mit. who asserts that reciprocation is not indicated by the particle "Cha"—vide Mit. chap. ii. sec. xi. para. 20, and Note.

widows, but not unaffianced daughters; for, the exclusion of unaffianced daughters would contradict the preceding passage [of Brahaspati], para. 7.

Something suitable may be given to daughter's daughter also.

10. Menu, referring to such daughters as share equally with brothers by the same mother, declares :—"Even to the daughters of those daughters, something suitable may be given through affection from the assets of their maternal grandmother."(1)

The term "suitable," defined.

"Suitable" means so far as is necessary for the performance of religious duties, regard being had to the poor condition and the like of the party receiving the amount.

Reason for something being given to a daughter's daughter.

11. If it be asked how can something be declared to be given to a daughter's daughter from the grandmother's property, while she possesses no sort of ownership over it during the life-time of the brothers and sisters [that is, the sons and daughters] of the deceased grandmother, the reply is as follows: an unmarried daughter, though not entitled to inherit the estate of her father (having sons), is declared(2) by law to be entitled to receive one-fourth portion from her brother. Likewise, in this instance also, although a grand-daughter has no ownership, yet something may be paid to her by the brothers and sisters on the cogency of the precept (permitting such a payment). There is however this difference. In the case of an unmarried daughter, although she is not entitled to inherit the property of her father, yet Menu, bearing in mind that she possesses an interest *by birth*(3) over the said property, attaches a penalty to the non-payment (of one-fourth portion to her)

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(1). This text is translated, as follows, in Mit.: "Even to the daughters of those daughters, something should be given as may be fit, from the assets of their maternal grandmother on the score of natural affection"—Mit. chap. ii. sec. xi. para. 17.

(2). See chap. iv. paras. 21 to 34 of this treatise.

(3). See chap. iv. para. 18 of this treatise.

by the passage "And they who refuse it shall be degraded." (1) But in the present instance, the grand-daughter possesses no interest by birth, and therefore it has been said in the passage "may be given through affection," thereby implying that if there be affection, something may be given; otherwise not.

Payment to a daughter's daughter is optional.

12. The same author [Menu] further states that a certain other kind of Stridhana, or separate property belonging to the mother, goes to unmarried daughters alone(2) and not to all daughters and brothers generally. Property given to the mother on her marriage 'Yautaka,' is the share of her unmarried daughters."

Yautaka goes to unmarried daughters alone. Passage of Menu.

13. Yautaka is wealth given by any one to the bride and bridegroom, while seated together, at a marriage or the like.(3) It is said in the Nighantu [Dictionary] that "the word Yautaka is derived from their being then joined together [Yuta]." The meaning is, that wealth given to the bride and bridegroom is denominated Yautaka, the term Yautaka deriving its origin from "Yuta," mingling.

Yautaka, defined.

14. Davasvamy, however, contemplates Yautaka to be of two descriptions. "What was received from the father's house being different from what was received from the house of the husband, is called the mother's Yautaka.(4) It

Davasvamy contemplates Yautaka to be of two descriptions.

The correctness of his opinion, doubted.

(1). See chap. iv. para. 32 of this treatise.

(2). See chap. iv. para. 48 of this treatise as to an unmarried daughter taking the trinkets of her mother, hereditary or otherwise.

(3). Yautaka [written both Yautuka and Yautaka] is explained by some as signifying "Savings effected by her good management out of what has been given to the woman for the purpose of providing bread, pot-herbs, &c. In the Kalpataru, the term is explained "Wealth given to a woman by her father and the rest at the time of her nuptials"—Jim. Vah. chap. iv. sec. ii. para. 14 and Note; see also Note to chap. ix. sec. ii. para. 7 of this treatise as to the explanation of the term "Yautaka."

(4.) From this it is clearly inferrible that Davasvamy makes a distinction in Yautaka, according as it is received from the house of the father or husband.

belongs exclusively to the mother." The propriety of this opinion is doubtful; the distinction being one created by the author [Davasvamy] himself.

Yautaka is to be divided equally among all unmarried daughters.

15. The distribution of Yautaka, where there are several unmarried daughters, is to take place according to the principle "Equality is the rule where there is nothing laid down to the contrary;" a different mode of partition not being prescribed.

The maternal estate, not being Anvádheya, Priti-datta, or Yautaka, goes to unmarried and unprovided daughters.

16. The maternal estate, not included in the three kinds(1) above noticed, belongs only to such daughters as are unmarried and unprovided though married, and not to all daughters indiscriminately. Accordingly, Gautama: "A woman's property goes to her daughters unmarried and unprovided."

Unmarried and unprovided daughters are to divide the property among them.

The term "unprovided," defined.

Vijnanaiswara's construction of the text of Gautama, rejected.

17. The meaning is, that such kinds of Stridhana as are denominated "Adhyagni" and the like belong to daughters unmarried, and married but unprovided. The wealth is to be divided among such daughters alone. The term "unprovided," used in the above text of Gautama, is to be interpreted according to Aparárka as implying an issueless, unendowed (that is destitute of wealth), unfortunate (Durbhagá),(2) or a widowed daughter.(3) The construction which Vijñanaiswara(4) has put upon the passage is to be rejected as founded on assumptions unwarranted.

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(1). These three kinds are Anvádheya, Priti-datta, and Yautaka.

(2). "Durbhaga," in Sanskrit, has several meanings, but here it seems to mean 'unfortunate.' A daughter may be unfortunate either by her being not loved or liked by her husband for no fault of hers.

(3). In Mit. chap. ii. sec. xi. para. 13, such daughters only are said to be "unprovided" as are destitute of wealth or without issue.

(4). Vijnanaiswara's construction is that, if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried; or among the married, if there be competition of

18. Yájñavalkya lays down a further rule on the subject.

Daughters share their mother's estate after paying her debts. Text of Yájnavalkya.

"The daughters (share) the residue of their mother's property after payment of her debts."

19. The meaning is that, after the death of the mother,

Explanation of the text.

her daughters unmarried and unprovided are to share equally the residue of their mother's wealth after discharging the debts that had been contracted by her.

On failure of daughters, the issue succeed.

20. If there be no such daughters, the same author adds, "And the issue succeed in their default."(1)

Text of Nareda on the same subject.

21. Nareda lays down the same rule in more explicit terms "On failure of daughters, their issue."(2)

22. As unmarried daughters could have no issue, the

Female issue first succeed.

above text must necessarily be understood to refer to the issue of married daughters. It is further inferrible that the issue must be female; the wealth descending in the female line.

In default of female issue, male issue succeed.

The comprehensive term "issue" has been used in the text to admit of the male issue of daughters taking the wealth in default of the female issue.

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endowed and unendowed daughters, it belongs exclusively to such as are unendowed—Mit. chap. i. sec. iii. para. 11, chap. ii. sec. xi. para. 13. But this construction is inconsistent with the particle "Cha" [and], which is used in the text of Gautama, in contradistinction to the particle 'Va' (or), which ought to have been used to support the above construction.

(1). I think that, before the issue of daughters, a daughter married *and provided* must have a place in the line of succession, as it is only on failure of daughters of *every* kind that the issue of a daughter succeed under the passage of Nareda in para. 21. See also chap. xi. sec. ii. para. 28 of this treatise.

(2). In Mit. chap. ii. sec. xi. para. 18, this is translated *male* issue, but this translation is not borne out by the Sanskrit text as quoted in the Smruti Chandrika, which simply says "Anvaya" (issue).

23. On failure of daughter's sons also, the sons of the deceased woman divide her wealth and debts; it appearing from the text of Yájñavalkya, "Let sons divide equally the assets and debts after the demise of their parents(1) [Pitarau]," that, after the demise of the mother, the sons are entitled to divide equally her wealth and also her debts. Were the text held inapplicable to the maternal estate, the use of the complex term Pitarau(2) "parents" in the text would become useless.

In default of daughter's sons, the sons of the deceased succeed.

Reason for the same.

24. In default of sons, the assets and debts of the deceased go to her son's sons. This is because by the text "Debts must be paid by sons and son's sons,"(3) sons' sons are declared liable to discharge the debts of their paternal grandmother, and because it is laid down that debts must be discharged by those that take the assets.

In default of sons, the assets and debts go to son's sons.

Reasons for the same.

25. Where the grandsons are by different sons, and they are unequal in number, the allotment of shares to them, during partition of their grandmother's assets and debts, is to be [as is the case in the partition of grandfather's property](4) according to their respective fathers. Likewise, where there are several granddaughters and grandsons by different daughters and unequal in number, their shares are to be allotted to them through their mothers; it being declared by Gautama, "Or the partition may be

Grandsons by different sons and grand-daughters and grandsons by different daughters take *per stirpes* and not *per capita*.

Text of Gautama on the subject.

(1). Vide chap. ii. sec. ii. para. 18 of this treatise.

(2). In this complex term, the father is first suggested by the radical term "Pitr," and afterwards the mother is inferred from the dual number. See chap. xi. sec. iii. para. 5 and Note of this treatise.

(3). See chap. xi. sec. ii. para. 10 of this treatise, where this passage occurs.

(4). See chap. viii. paras. 3 and 4 of this treatise.

according to the mothers, and a particular distribution may be made in the respective sets."(1)

Passage of Kátyáyana directing sons to inherit on failure of daughters, applicable to Yautaka.

26. Kátyáyana says:—"On failure of daughters, the inheritance goes to sons." The term "daughters" used in this text means unmarried daughters, as in their case only there could exist no issue of either sex. The text of Kátyáyana must therefore be understood as applicable to that kind of Stridhana which is called "Yautaka."

The property of a childless woman goes to her husband, if she had been married in one of the five approved forms. Passage of Yájnavalkya.

27. Where a wife leaves no progeny, her wealth goes to her husband; it being declared by Yájñavalkya, "The property of a childless woman [married] in the form denominated Bráhma or even in any of the four [unblamed modes of marriage] goes to her husband."(2) By the use of the particle Api "even" in the above text, the marriage of the form of "Gandharva" is also included.

Passage of Menu on the same subject.

28. Hence, Menu:—"It is ordained that the property of a woman married in the form called Bráhma, Daiva, Arsha, Gandharva or Prájápatya, shall go to the husband, if she die without issue."(3)

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(1). Where the daughters were numerous, but are not living; and their female children are unequal in number, one having left a single daughter, another two, and a third three; how shall the maternal grandmother's property be distributed among her grand-daughters? Having put this question, the author reminds the readers of the mode of distribution of a paternal grandfather's estate among his grandsons—Note to Mit. chap. ii. sec. xi. para. 16.

(2). This text is translated, as follows, in II Digest, page 614: "A married woman dying without issue, her property received at Bráhma nuptials, or even in other four unblameable forms of marriage, it goes to her husband;" but I have adopted the translation made of the text in Mit. chap. ii. sec. xi. para. 10, as it appears to me to be more in conformity with the Sanskrit text as quoted in, and interpreted by the Smruti Chandrika.

(3). In II Digest, page 615, "and" is used instead of "or" between the words "Gandharva" and "Prájápatya," but this seems to me to be an evident mistake, as a woman could not be married in all the five forms, but only in one or other of them.

29. The property of a woman married in one of the five forms specified, goes in default of heirs from daughters down to the son's son, to the husband of the deceased and not to the mother and the like relations.

Exposition of the passage.

30. The text of Kátyáyana—"What was given by kinsmen goes, *in default of the kinsmen* to her husband," refers to the property of a woman married in any but the five forms of marriage above described; for, the same author has accordingly declared :—"What is received from parents by a woman married in the form called 'Asura' and the like,(1) goes, in default of her issue, to her mother and father."

Gift by kinsmen to a woman married in one of the disapproved forms goes, in default of her issue, to the kinsmen. Text of Kátyáyana on the subject.

Received from parents] Received from mother, or father, as a present. In default of her issue] In default of the issue of the woman married in the form of Asura or the like. The word "issue" denotes the whole range of heirs from daughter's son to son's son, who have been declared above as capable of inheriting Stridhana.

Explanation of certain terms in the latter text of Kátyáyana.

31. Yama says :—"Wealth which is given at the marriage called 'Asura' or the like is to be taken by the father alone, where the woman dies without issue." The word "given" used in the text means "given by the father," and hence this text is not inconsistent with the one already cited.

Wealth given to a woman married in the form of Asura or the like by her father is to be taken, on her demise without issue by the father, as declared by Yama.

32. In like manner it must also be understood that Stridhana or property given to a woman married in the form of "Asura" or the like, by her paternal uncle, brother, maternal uncle, and other simliar relations, reverts, after her demise, to such relations, where they

In like manner property given by other kinsmen reverts also to them.

(1). The words "and the like" refer here to marriages of the form of "Paiçacha" or "Ratchasa."

survive her, and that failing them, it goes to her husband.

Gautama notices an exception to the rule in the case of Culka.

Gautama, however, as an exception to this rule, says that a certain kind of donation made by relations does not go back to the donors. "The sister's perquisite [Çulka] belongs to the uterine brothers; after them, it goes to the mother."(1)

Culka goes to uterine brothers, and in default of them, to the mother.

33. The definition of Çulka is given in the former section.(2) This kind of property, though given by the bridegroom and the like, does not revert to them, but goes to the uterine brothers, and in default of them, to the mother.

Where the bride dies before the completion of the marriage, nuptial presents may be taken back. Passages of Cankha and Yájnavalkya, quoted.

34. Çankha, after premising "may take back," proceeds "the bridegroom [may take back] his nuptial present." This text must be considered as applicable to the case of a bride dying before the completion of the marriage; it being declared by Yájñavalkya, "If she die, let what had been presented be taken back."(3)

Explanation of certain terms in the passage of Yájnavalkya.

What had been presented] Whether a Çulka, ornaments, or the like. Be taken back] Be taken back by the bridegroom.

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(1). This passage of Gautama has been translated here in conformity with the interpretation of the Smruti Chandrika. In Mit. chap. ii. sec. xi. para. 14, this passage is rendered thus—"The sister's fee belongs to the uterine brothers: (after the death of) the mother." Jimuta Vahana's interpretation, however, of this passage agrees with that of the Smruti Chandrika. See Jim. Vah. chap. iv. sec. iii. para. 27, and Note.

(2). Chap. ix. sec. i. para. 5 of this treatise.

(3). The passage of Yájnavalkya does not end here. It concludes by saying "paying however the charges on both sides" (Mit. chap. ii. sec. xi. para. 29); and the meaning has been explained by Subodhini to be this: after deducting from the damsel's property the amount which has been expended by the giver or acceptor of the maid, or by their fathers or other relations on both sides, in contemplation of the marriage, let the residue be delivered to the bridegroom—Note to Mit. chap. ii. sec. xi. para. 30.

The wealth of a deceased damsel goes, according to Baudháyana, to her uterine brothers; in default of them, to her mother, and in default, to her father.

35. Baudháyana, referring to the wealth of a damsel, says:—"The wealth of a deceased damsel, let the uterine brothers themselves take. On failure of them, it shall belong to the mother; or if she be dead, to the father."

Brahaspati's enumeration of secondary mothers and of the heirs to their property.

36. Brahaspati enumerates secondary mothers and points out who take their inheritance. "The sister of a mother, the wife of a maternal or of a paternal uncle, the sister of a father, the mother of a wife, and the wife of an elder brother are declared equal to a mother. If they leave no (male) issue of their body, nor the son of a daughter, nor a daughter, the sister's son and the like shall inherit their property."(1)

Exposition of the text of Brahaspati.

37. The sons of the sisters of the deceased take the property of their maternal aunt. Likewise, it must be understood, by the use of the words "and the like" in the text, that the other heirs are to take the wealth of their respective secondary mothers in due order.(2)

Succession of the issue of a rival wife to the property of the step-mother where the latter leaves no issue, husband, or the like.

38. Likewise, the issue of a rival wife takes the property of the step-mother, where the latter leaves no progeny, husband, or the like.

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(1). This text is translated, as follows, in II Digest, page 621:—"The sister of a mother, the wife of a maternal or of a paternal uncle, the sister of a father, the mother of a wife, and the wife of an elder brother, are declared equal to a mother. If they leave no issue of their body, nor the son *of another wife of the husband*, nor the son of a daughter, nor the son's son *of another wife*, the sons of their sisters and so forth shall *therefore* inherit their property." The translation contains several additions not borne out by the Sanskrit text as quoted in the Smruti Chandrika.

(2). By the use of the phrase "in due order," it further appears that, in default of the heir first mentioned, the next in order succeeds. In II Digest, page 622, it is accordingly said that the sister's sons and the rest have not a co-ordinate title but a successive one, and that they therefore succeed in order as enumerated.

Menu notices an exception to the rule in the case of a Brahmani damsel.

39. Menu declares that, in certain instances, the issue of a particular class of rival wives take the property of the deceased step-mother notwithstanding the survival of the latter's husband, father, brother, or the like. "The wealth of a woman which has been, in any manner, given to her by her father, let the Brahmani damsel take; or let it belong to her offspring."(1)

Exposition of the text of Menu.

40. By the phrase "given to her by her father," it is intended to show that the Brahmani damsel takes the inheritance even if the brother, father, and others who are declared above to be capable of taking the inheritance should exist. The purport of the passage hence is, that the property of a woman of a *class different* from that of her husband is inherited where she has no issue, by the damsel of another wife of the *same class* with her husband, or her offspring.

Inferences deducible from the text of Menu.

41. It is inferrible from the above passage that where there are several wives, all of classes *different* from that of the husband, the wealth of a wife dying without issue is inherited, not by the damsel of another wife or her offspring, but by the husband alone, where the marriage had taken place in one of the approved forms, such as Brahma and the like, and, in other cases, by the donor himself.

Passage of Kátyáyana closing the subject of Stridhana.

42. Kátyáyana closes the subject of Stridhana by the following verse:—"Thus the law relating to Stridhana or woman's property and the partition thereof has been explained."

Exposition of the passage.

43. The meaning is, that the law thus expounded and the rules of partition thus detailed relate to Stridhana or woman's separate property.

(1). See Mit. chap. ii. sec. xi. paras. 22 and 23, Note.

SUMMARY (BY THE TRANSLATOR).

I. In the case of Stridhana, the demise of the owner and the survival of the heir are the only circumstances recognized by law as creating a right in the latter to inherit.

II. That kind of Stridhana, which is termed "Anvádheya," and what was given to a woman through affection by her husband, devolve, on her demise, on the sons and daughters (excluding, however, widowed daughters) surviving her, and these are to divide the property equally among them. They may also give something suitable out of the property to daughters of daughters, if they have affection towards them, but not otherwise.

III. The Stridhana called "Yautaka" belonging to the mother goes, on her demise, to her unmarried daughters alone, and, in default of them, to sons.

IV. Stridhana not being of the three kinds above noticed, goes first to daughters unmarried, and unprovided though married. The latter description of daughters includes not only daughters destitute of wealth but also daughters issueless, unfortunate, or widowed. These daughters (namely, unmarried and unprovided) are first to pay their mother's debts out of the property and divide the residue among them. In default of such daughters, (the daughters married *and provided* succeed). On failure of them too, the right of succession goes to the daughters of daughters, then to the sons of daughters, then to the sons, and lastly to the son's sons.

V. Where there are grandsons by different sons, or grand-daughters or grandsons by different daughters, and they are of unequal number, they take *per stirpes* and not *per capita.*

VI. Where a wife leaves no heirs, from daughters, down to son's sons, her wealth goes to her husband, if she had been married in one of the forms of Brahma, Daiva, Arsha, Prajapatya, and Gandharva.

VII. If she had been married in the form of Asura,

Paiçacha, or Ratchasa, the property left by the woman is taken by such of her kinsmen as had given it to her as Stridhana during her life-time. In default of such kinsmen, the husband takes the property.

VIII. The only exception to the above rule is the case of Çulka, which, though given by the bridegroom and the like, does not revert to them on the demise of the woman, but goes to her uterine brothers, and in default of them, to the mother.

IX. Where, however, a bride dies before completion of the marriage, the nuptial presents, &c. given by the bridegroom will be taken back by him.

X. In the case of property left by a maiden, the right devolves first on the uterine brother, or if there be none, on the mother; but if she be dead, on the father.

XI. Where a woman dies leaving no progeny, her estate is inherited either by her sister's son, her husband's sister's or brother's son, her own brother's son, her son-in-law, or her husband's younger brother.

XII. If all or several of the above heirs are in existence, it appears that they all have not a co-ordinate title, but a successive one in the order enumerated.

XIII. The issue of a rival wife take the property of the step-mother, where the latter leaves no progeny, husband, or the like.

XIV. The property of a woman of a class *different* from that of her husband is inherited, where she has no issue, by the damsel of a wife of an *equal* class with her husband or her offspring.

XV. If, however, there be no damsel of the wife of the *same class* with her husband, her wealth is taken by the husband alone, where the marriage had taken place in one of the approved forms, and in other cases, by the donor himself.

CHAPTER X.

ON PARTITION OF WEALTH RECEIVED THROUGH SECONDARY FATHERS.

Passage of Menu.

1. Menu:—"Not brothers nor parents, but sons inherit the property of their father."

Objector's argument.

2. Here, the objector says, "Menu has already declared:—'A legitimate son (Aurasa)(1) *is alone* the lord of the father's wealth.' This sufficiently indicates the exclusion of brothers and others from the participation of the deceased's wealth. While so, what necessity was there for express exclusion being made of them in the text above quoted. It could not be said that the above text relates to sons *deceased;* for, it would be clearly inconsistent with the plain wording of the text that sons inherit the property of their father."

Reply.

3. The reply is:—In the sentence "Sons inherit the property of their father," the words "father" and "sons" refer to the secondary father and secondary sons. The meaning hence is this: The sons of the description of Kshétraja and the like inherit the property of their respective fathers' [namely, the husband of the woman on whom the Kshétraja was procreated and the like,] and not the brothers, &c. of such fathers.

Kshétraja and other secondary sons inherit in preference to brothers, parents, &c.

Menu enumerates the different classes of secondary sons.

4. The same author [Menu] defines "Kshétraja and the other classes of secondary sons":—

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(1). The issue of the breast (Uras) is a legitimate son (Aurasa).

I.—He who was begotten, according to law, on the wife of a man deceased, impotent, or degraded, after due authority given to her, is called 'Kshétraja' or the lawful son of the wife.

Kshétraja.

II.—He whom his father or mother affectionately[d] gives as a son, being[c] alike [by class] and in[b] a time of distress; confirming[a] the gift with water, is called 'Dattrima' or a son given.

Dattrima.

III.—He is considered as 'Krtrima' or a son made, whom a man acquainted with right and wrong takes,[e] the boy being equal in class and endued with filial virtues.(1)

Krtrima.

IV.—In[g] whose mansion soever a male child shall be brought forth, if the real father cannot be discovered, that child is called 'Gudhotpanna' or a son of concealed birth in the house, and belongs to the lord of the wife [by whom the child was secretly conceived].

Gudhotpanna.

V.—A boy, whom a man receives as his own son after he has been deserted[h] by his parents or by either of them, is called an 'Apavidha,' or a son rejected.

Apavidha.

VI.—A son, whom a damsel conceives secretly in the house of her father, is considered as the son of her husband and denominated 'Kánina' or damsel's son, as being born of an unmarried woman.(2)

Kánina.

VII.—If a pregnant young woman marry, whether her pregnancy be known or unknown, the male child in her womb belongs

Sahodha.

(1). In II Digest, 410, this text is translated, as follows :—"He is considered as a son made, *or adopted,* whom a man takes as his own son, the boy being equal in class, endued with filial virtues, acquainted with *the* merit *of performing obsequies to his adopter,* and with *the* sin *of omitting them.*"

(2). This text is translated, as follows, in II Digest, 377 :—" A son whom the daughter of any man privately brings forth in the house of her father, if she afterwards marry her lover, is described as a son begotten on an unmarried girl."

to the bridegroom and is called 'Sahodha' or a son received with his bride.

VIII.—He is called 'Krita' or a son bought, whom a man, for the sake of having issue, purchases from his father and mother, whether(f) the child be equal or unequal to him.

Krita.

IX.—He whom a woman, either forsaken by her lord or a widow, conceived by a second husband whom she took by her own desire, is called a 'Paunarbhava' or the son of a woman twice married.

Paunarbhava.

X.—He who has lost his parents or been abandoned by them without just cause, and offers himself to a man [as his son] is called 'Svayamdatta' or a son self-given.

Svayamdatta.

XI.—A son begotten through lust on a Çudra woman by a Brahmin is a corpse(i) though living, and is therefore called 'Parasava,' a living corpse.

Parasava.

Thus the learned have named(l) eleven sons [Kshétraja being the first of them] in due order as(j) substitutes for a begotten son, to(k) secure the performance of religious rites.

These are substitutes for a begotten son.

[a.] Confirming the gift with water] This indicates the form in which the gift of a son is to be made. We have shewn the law relating to the gift of a son in the chapter "On Donor and Donee."

Explanation of certain terms in the above passage of Menu.

[b.] In a time of distress](1) In a time of famine or the like, or where the adopter is in distress from want of issue.

[c.] Being alike] The giver and the receiver being both of the same class.

[d.] Affectionately] Without avarice.

[e.] Takes] Takes, as a son, one having no guardian.

(1). As to the different constructions put upon the term "distress," see note to Mit. chap. i. sec. xi. para. 10.

[*f.*] Whether the child be equal or unequal] Equal or unequal in good qualities.

[*g.*] In whose mansion] By the wife in the mansion.

[*h.*] Deserted] Deserted because he was born at an inauspicious hour or the like and not because of degradation.

[*i.*] A corpse though living] A dead son though with life.

[*j.*] As substitutes for a begotten son] As secondary sons.

[*k.*] To secure the performance of religious rites] To prevent failure occurring in the performance of Çradha and other rites performable by a legitimate son, from want of such a son.

[*l.*] Have named] Have named for persons who may apprehend failure of religious rites.

The adopted son alone recognized in the Kali age as a sustitute for the son begotten.

5. The secondary sons thus enumerated had all been recognized as sons in former ages; but, in the Kali age, the adopted son alone is acknowledged. By the text "None is to be taken as a son except a son of the body or one who is adopted;" the learned have, in the early period of the Kali age, prohibited the recognition of any other son than the legitimate and the adopted, with the view of maintaining virtue in the world.

The appointment of a daughter prohibited in the Kali age.

6. The appointment of a daughter to raise up a son to her father must also be considered by the same text to be prohibited in the Kali age, such a son not being either one of the body or adopted. The conclusion hence is that, in the Kali age, in default of a legitimate son or grandson, the adopted son alone and none else is recognized as a subsidiary son.

A son of the body does not become legitimate when he is born of a woman of an unequal class. Passage of Dharmajnya.

7. Even a son of the body does not become a legitimate son when he is born of a wife of an unequal class, the marriage of a woman of an unequal class being in itself prohibited in the Kali age. Accordingly, Dharmajñya :—"The marriage of girls of an unequal class by twice-born men," Add to these, "is

prohibited by the great in the Kali age, in view to maintain virtue." We have not therefore detailed the laws relating to partition of property among sons of unequal classes, secondary sons [an adopted son excepted], appointed(1) daughters, and the sons of such daughters, as it would tend in vain to swell the work; such a partition being in the present age obsolete.

A son-less man does not become a father by reason of his brother having a son.

8. Menu, however, declares:—"If, among several brothers of the whole blood, one have a son born, Menu pronounces them all fathers of a male child by means of that son." This text does not actually make the brother of one having issue the father of a male child by means of that issue; the law treating him as issueless though his brother has issue. Hence Yájñavalkya, in the text:—(2) "The wife and the daughters, &c.," contemplates a deceased to be issueless notwithstanding the existence of his brother's son. He further places a brother's son in the line of heirs to the property of an issueless man, *after* the wife, daughter, parents, and brothers.

Objector's argument.

9. The objector here asks:—"If one were not to be considered a father by reason of his brother having issue, of what use would be the above text of Menu?" The reply is that, in the chapter treating of persons competent to perform the

Reply.

Çradha and the like, one brother is declared as becoming a father by reason of another giving birth to a child, and this is simply to extol the merits of the issue of the body, and is not to be understood in its literal sense any more than the expression "Father [thatha] of the village."

Passage of Sangrahakara.

10. Sangrahakara, however, says:—"Where there are several uterine brothers of the same class and one of them begets a son,

(1). This refers to a daughter becoming, by special appointment, a son; see Mit. chap. i. sec. xi. para. 3—Note.
(2). Vide Mit. chap. ii. sec. i. para. 2.

the rest are considered fathers by means of that son. The same principle holds good where there are several wives. If one of them begets a son, he offers funeral cakes to all the rest."

Devasvami's construction of the passage of Sangrahakara.

11. To reconcile this text with what has been already said, Devasvami construes the passage as follows:—"Because it is said at the conclusion of the treatise [of Sangrahakara] that 'in both the cases, no other son is to be substituted,' it must be understood by the two Çlokas or texts composing the passage, 'where there are several uterine brothers of the same class and one of them begets a son, &c.,' that, where there is a brother's son or the son of a rival wife and he is capable of serving in any way as a substitute for the son of the body, no other son is to be substituted."

Conclusion.

12. Hence, in the Kali age, property devolves from the secondary father on the adopted son alone and on no other kind of secondary sons.

Adopted son takes the effects and "Gotra" of the adopter. Passage of Menu.

13. Menu, on the subject, says:—"Of the man to whom a son has been given, adorned with every virtue, that son shall take the heritage even though brought from a different 'Gotra' or family."(1) The particle 'Api' (even) used in the text, indicates that the same is the case

(1). In S. A. No. 412 of 1862, [I M.H.C.R. 54] the Madras High Court held that the adoption of an only son was, when made, valid according to Hindu law.

As to the validity of the adoption of an eldest son, see Regular Appeal No. 49 of 1853, M.S.D. of 1854, pa[illegible] 31.

The weight of authority is against the validity of the adoption of one upon whom the Upanayana or investiture with thread has been already performed. See the Judgment of the High Court in Special Appeal No. 35 of 1865, III M.H.C.R. 28.

An orphan cannot be adopted—II M.H.C.R. 129.

A widower may adopt—II M.H.C.R. 367.

A widow may adopt under the authority of her husband or with the assent of the majority of his surviving kindred—II M.H.C.R. 206.

where the son adopted belongs to the same 'Gotra' or family with the adopter.

Devasvami's explanation of the passage.

14. The substance of the third(1) quarter of the above text is explained by Devasvami, as follows :—" He, the adopted, takes the whole effects as well as the 'Gotra' of the adopter." It must therefore be concluded that, by the fact of adoption, the adopted acquires a right over the property of the individual who receives him in adoption, and also gets his [adopter's] "Gotra" or family name.(2) Likewise, the adoption severs the boy from his natural family, and renders him no more the son of his natural father. He is hence excluded from the participation of the wealth of the person who gave him in adoption and also from bearing his family name.(3)

Adoption severs the boy from his natural family.

He possesses no right of succession in his natural family.

A text quoted on the subject.

15. Accordingly, it is declared in the following text: "A given son must never claim the family and estate of the natural father."

An adopted son entitled to one-fourth share only where a legitimate son is subsequently born. Passage of Vasishta.

16. In taking the assets of the adoptive father too, there are certain instances in which the boy adopted does not inherit the *whole* estate. Accordingly, Vasishta :—" When a son has been

(1). This is that portion of the passage which begins with "That son shall take the heritage."

(2). See Narasummal *vers.* Baloramacharlu, in which the Madras High Court observe that the theory of an adoption is complete change of paternity; that the son is to be considered as one actually begotten by the adoptive father, and he is so in all respects save an incapacity to contract marriages in the family from which he was taken—I M.H.C.R. page 420.

(3). In S. A. No. 177 of 1861, [I M.H.C.R. page 180], the High Court have ruled that a member of a Hindu family cannot, as such, inherit the property of one taken out of that family by adoption; and that the severance of an adopted son from his natural family is so complete, that no mutual rights as to succession to property can arise between them.

adopted, if a legitimate son be afterwards born, the given son shares a fourth part."(1)

Passage of Vishnu.

17. Vishnu :—"Among grandsons by different fathers, the allotment of shares is according to the fathers. Each of the grandsons takes that which was his father's property and not the other."

Partition among the principal and secondary sons by different fathers takes place according to their respective fathers.

18. If, where, among several brothers, one has a true legitimate son, and the others have sons of the description of "Kshétraja" and the like, and the brothers die in an undivided state, the partition of the grandfather's property then takes place among the principal and secondary sons according to their respective fathers.(2)

There too, the secondary son gets only a fourth part where he is superseded by a legitimate son.

19. There too, where the secondary son of a brother has been superseded by a legitimate son subsequently born to the same brother, the former, that is, the secondary son, gets only a fourth part according to the law as already set forth (para. 16).

A similar rule to be observed where some of the brothers are living and the others dead.

20. A similar rule is to be observed *(mutatis mutandis)* where some of the brothers only are dead and the others are living.

SUMMARY (BY THE TRANSLATOR).

I. There are eleven kinds of secondary sons, but, of them, the adopted son alone is recognized in the present Kali age. He inherits in default of a legitimate son or grandson.

II. Even a son of the body does not become a legitimate son when he is born of a wife of an *unequal* class.

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(1). See Ayyavu Muppanar *vers.* Niladatchi Ammal, wherein the Madras High Court have ruled that the share of an adopted son is one-fourth of the share of a son born to the adoptive father after the adoption—I M.H.C.R. 45.

(2). See chapter viii. para. 1 of this treatise.

III. A sonless man does not become a father by reason of his brother having a son.

IV. An adopted son takes the whole effects, as well as the "Gotra" or family name of the adopter.

V. He is excluded from participation of the wealth of his natural father and also from bearing his family name.

VI. When a son has been adopted, if a legitimate son be afterwards born, the adopted son shares only a fourth part.

VII. Among grandsons, principal and secondary, by different fathers who are deceased, the partition of the grandfather's property takes place according to their (grandson's) respective fathers.

CHAPTER XI.

ON THE ORDER OF SUCCESSION TO THE ESTATE OF ONE DYING WITHOUT MALE ISSUE.

SECTION I.

ON THE WIDOW'S RIGHT OF SUCCESSION.

Text of Menu.

1. Menu :—"The estate of one who leaves no male issue is inherited by the father or by the brother alone [Eva]."(1)

Passage of Sangrahakara explaining the purport of the above text of Menu.

2. The literal meaning of this passage is clear; but the purport of it is rather obscure, and it is explained, as follows, by Sangrahakara :—"We now explain by whom the property of one who dies without son of any description is to be inherited."

Exposition of the passages of Menu and Sangrahakara.

3. The meaning of Sangrahakara's passage is this: Where a person possessing estate dies without a son principal or secondary, then, that is, after the death of such person, if it be asked who inherits his estate, Menu declares that it is to be inherited by the father or the like. But the word "now," used in the text of Sangrahakara, shews that the passage of Menu is applicable only to a case in which there may exist no nearer relation of the deceased capable of conferring manifold benefits on him than the father and the like. Sangrahakara, therefore, bearing in mind that secondary sons are nearer relations of the deceased than the father and the like, construes the passage, "The estate of one who leaves no male issue is inherited by the father, &c." as referring to one destitute of sons of *any*

(1). See chap. xi. sec. v. para. 10 of this treatise.

description. This is unobjectionable. As secondary sons are better competent to confer benefits temporal and spiritual on the deceased than the father and the like, and are hence his nearer relations, so are widows also (as appears from a careful examination of the Vedas, Smrutis, &c.) better competent to confer benefits temporal and spiritual on the deceased than the father and the like, and are therefore his nearer relations compared with the father and the rest. It is hence inferrible that Menu declared the estate of a sonless man inheritable by the father, *in default of even the widow.*

Widows are entitled to inheritance in default of sons principal and secondary. Passage of Brahaspati.

4. Brahaspati, therefore, observing that wives are more closely allied to the deceased than any one else by reason of their conferring benefits temporal and spiritual on him, holds, by the following passage, that the widows alone are entitled to inheritance in default of secondary sons, notwithstanding the existence of the father and relations as far as "Sakulyas."(1) "In Scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, equally sharing the fruits of *pure and* impure acts.(2) Of him whose wife is not deceased, half the body survives; how then should another take his property while half his person is alive? The widow (Patni) of a deceased man who left no male issue takes his share, notwithstanding kinsmen, a father, a mother, or uterine brother, be present."

Object of the second hemistich of the above passage.

5. By the second hemistich of the above passage, the superiority of a widow over the father and the like, in point of competency to procure for the deceased benefits temporal and spiritual, has been demonstrated.

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(1). Sakulyas are distant kinsmen or Samanodacas. See chap. xi. sec. v. para. 13 of this treatise.

(2). Another reading of this passage is to be found in some of the copies of the Smruti Chandrika. Pumsáh Punéya Phala Samá "equally sharing the fruits of the pure acts of the husband" instead of Púneya Puneya Phala Samá "equally sharing the fruits of pure and impure acts."

6. That a wife is half the body of her husband, is pointed out in the following passage of the Scripture: "She who is a wife (Patni) is half of her husband's body (Athmanah) itself." The word 'Athmanah' means "of the body." The substance of this passage is, that a wife confers so much benefit temporal and spiritual on her husband as half of his own body does.

Authority of Scripture cited in support of the above passage of Brahaspati.

7. In the code of law, that is, in the Darma Çastrá, it is laid down thus: "Of him whose wife drinks wine, half the body sinks. In the case of him, half of whose body has sunk, no expiation is prescribed."

Authority of the Code of Law, cited.

8. In popular practice, *i.e.* in the Çasters exhibiting the laws sanctioned by popular usage, it is provided "Which learned will renounce a wife who is half of the body?"

Authority of the Casters exhibiting the popular practice, cited.

9. Equally sharing the fruits of pure and impure acts] This is because a wife (Patni)* possesses power to associate with her husband in the performance of religious rites. Who left no male issue] Who left no son, principal or secondary.

Certain terms in the passage of Brahaspati [para. 4], explained.

The wife "Patni," means a wife lawfully wedded in one of the approved forms of marriage, Brahma or the like, capable of conferring on the wife a power to associate with her husband in the performance of religious sacrifices; it being also declared by Panini that "the term Patni 'wife,' anomalously derived from Pati 'husband,' is employed when connection with sacrifices (meaning religious rites) is indicated."(1) The term 'Patni' applies to a wife of no other kind.

Who is Patni.

Authority of Panini, quoted.

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* As to the definition of "Patni" by Mitákshara, see Mit. chap. ii. sec. i. para. 5.

(1). The term "Patni" is formed by the letter "N" being added to the word "Pati" [before the letter *i*.]

10. Hence a wife bought (as in Asura marriage, &c.) is not called "Patni," there not being in her that connection with religious rites which is essential to a "Patni." Accordingly, in another Smruti: "That woman who has been purchased for value paid is not styled a 'Patni';—she associates neither in rites relating to deities, nor in rites relating to the manes. The learned call her to be a slave (Dási)."

A wife married in the form of Asura, &c. not a Patni.

Passage of Smruti on the subject.

11. When a wife is not a Patni, she is capable of conferring temporal benefits only. In order to show that a wife, not being a "Patni" is incapable of conferring spiritual benefits, it is said that the learned call such a wife a slave or "Dási."

A wife not being of the rank of a Patni, confers temporal benefits only.

She is called a slave by the learned.

12. Hence, by the term "Patni" being used in the text (para. 4) of Brahaspati above quoted, before the phrase "takes his share," it is shewn that, to entitle a widow to inherit the estate of her husband, it is essential that she should have been capable to perform the rites relating to the manes and the like.

What is intended by the use of the term "Patni" in the passage of Brahaspati in para. 4.

Prajapati therefore points out, by the following passage, that, to such a Patni alone, the right of inheritance attaches, as is capable of maintaining by her chastity the religious rites prescribed by both the Scripture and the code of law. "Dying before her husband, a chaste woman [Nari] partakes of his consecrated fire [Agnihotra],(1) or if her husband die [before her], she shares his wealth. This is a primeval law."(2)

Passage of Prajapati on the same subject.

(1). Partakes of his consecrated fire] This is because, after her decease, her body is burnt with fire taken from his consecrated hearth—Mahaecwara; see Note to Jim. Vah. chap. xi. sec. i. para. 2.

(2). This text has been translated, as follows, in II Digest, page 522: "*Since* she *was* previously espoused in due form, she must support the consecrated fire; and after the death of her husband, the widow, faithful to her lord, shall take his wealth: this is a primeval law."

Certain terms in the passage of Brahaspati, explained.

By the word "Agnihotra" used in the text, is meant the fire belonging to the consecrated hearth.

A chaste woman] A virtuous woman or one that lives with her husband, associating with him in the performance of rites ordained by the Çruti and Smruti, and observing fastings and other religious ceremonies.

What is meant by the term "Nari," used in the passage.

13. The term "woman" [Nari] used in the above text of Prajapati, means a wife of the rank of a Patni. That she is such a wife is apparent from her being said to be the partaker of consecrated fire.

Preference given to a Patni over the brother and the like in performing the rites relating to the manes. Passage of Brahaspati.

14. To a wife competent to associate with her husband in the performance of religious rites, Brahaspati gives preference over the brother and the like in point of performing the rites relating to the manes. "On failure of a son, a wife [Patni], and on failure of a wife, an uterine brother."

A chaste Patni presents the funeral oblations of her husband and obtains his entire share. Passage of Vrddha Menu.

15. On the subject, Vrddha Menu:—"The widow [Patni] of a childless man, keeping unsullied her husband's bed, and persevering in religious observances, shall alone present his funeral oblations and obtain also his entire share."(1)

Exposition of the passage.

16. In the second hemistich of the passage, an inverse(2) order in point of construction must be observed. It must be construed

(1). In the commentary of Jim. Vah. which bears Raghunandana's designation, another reading of the text is noticed: viz., Krtsnam artham 'the entire estate,' instead of Krtsnamamcam 'the entire share.' That reading is countenanced by the Ratnakara and Chintamani, but disapproved by Jim. Vah. with whom Viramitrodaya and the Smruti Chandrika agree. See Note to Jim. Vah. chap. xi. sec. i. para. 7.

(2). In this hemistich it is said, first, that the widow shall present her husband's funeral oblations, and then that she shall obtain his entire share, but in fact, without first taking possession of the estate, it would be impossible for her to defray the expenses of his funeral rites.

that a Patni possessing the qualifications referred to, ought exclusively to take, first, the whole estate of her husband and then offer his funeral oblations; and that, during her life-time, neither the brother nor the rest are competent either to take the inheritance or to perform the obsequies.

Certains terms in the passage explained.

17. Keeping unsullied her husband's bed] Being chaste. Persevering in religious observances] Practising religious ceremonies even during the life-time of the husband with the husband's permission, it being declared by Çankha and Likhita: "The duty of a wife is to commence wilfully the religious observances, fastings, sacrifices,(1) &c. with the permission of her husband."

A Patni inheriting her husband's estate must also be a pious woman.

18. It is hence to be understood that the author of the passage indirectly points out that a Patni, to inherit her husband's estate, must also be a pious woman.

Patni obtains independent power over her husband's property on his demise.

19. The words "obtain also" have been used in the above text, para. 15, of Vrddha Menu, to show that a Patni who, by reason of her marriage, acquired(2) ownership but of a dependent character over the entire property of her husband, obtains, on his demise, independent power over it.(3)

The terms "funeral oblations" and "entire" used in the passage of Vrddha Menu, explained by Prajapati.

20. In the following passage of Prajapati, the meaning of the words "funeral oblations" and "entire" used in the above text of Vrddha Menu, para. 15, has been explained:—"Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids and the clothes, let her duly offer his monthly, half-yearly, and other [Adikam] funeral

(1). The duty of a wife to perform sacrifices may be imagined in instances where the perpetual fires, such as "Agnihotra," "Aupasana," &c. are maintained by the wife with the husband's permission during the temporary absence of the latter from home.

(2). Chap. ix. sec. ii. para. 14 of this treatise.

(3). This independent power is however subject to the restriction contained in para. 29 of this section.

repasts.(1) With presents offered to his manes and by pious liberality, let her honour the paternal uncle of her husband, his spiritual parents (Guroo), and daughter's sons, the children of his sisters, his maternal uncles, and also aged and unprotected persons and guests."

Explanation of certain terms in the passage of Prajapati.

Base metals] Brass, lead, and the like. With presents offered to his manes] With boiled rice offered in honour of departed ancestors. By pious liberality] By presents, &c. made for the construction of wells, tanks, and the like.

A Patni, on taking her husband's estate, must apply it to purposes religious and charitable.

21. The rule hence inculcated is, that a Patni having taken the entire property of her husband inclusive of immoveables, must, in proportion to the wealth derived by her and in presence of the spiritual counsellors and priests of her deceased husband, perform acts [within the competence of a female to perform] calculated to increase the prosperity of herself and of her lord; such as making Çradhas, digging wells, &c. and giving presents, all requiring for their accomplishment pecuniary aid.

The opinion of some that wealth inherited by a widow does not prove beneficial to her husband, rejected.

22. Some, however, say that the wealth inherited by a widow [Patni] is not enjoyed by the worthy relations of her husband and does not prove beneficial to him, and that consequently the heritage becomes useless, and the widow is not hence entitled to inherit all the property of her husband. But this opinion is to be rejected as groundless.

Patni inherits only where the husband dies divided. Text of Brahaspati.

23. The right of a widow [Patni] to inherit arises only where the husband dies divided in estate.(2) Accordingly, Brahaspati :— "Whatever property a man possesses of every kind after division, whether mortgaged or other,

(1). The author of Vya. May. varies the reading of this passage by omitting mention of grains after metals, and reading abdikam 'yearly' for adikam, 'other.' See Note to Vya. May. chap. iv. sec. viii. para. 2.

(2). According to the Bengal law, the property of a man dying without male issue goes to his widow whether he be divided from his co-heirs or not —Jim. Vah. chap. xi. sec. i. para. 46.

the wife [Jaya] shall take after the death of her husband, with the exception of fixed property."

24. The purport of the text is, whatever is the property of a deceased husband, whether consisting of moveables or immoveables, whether pledged or otherwise, the widow alone takes, where the husband was a divided member of the family.

Exposition of the text.

25. From its being laid down that a widow becomes entitled to succeed where the husband *dies divided*, it is understood that where the husband dies *undivided*, his father, brother, or the like, who lived in union with him takes the property of the issueless man.(1)

Where the husband dies undivided, his property devolves not on the widow but on his surviving co-parceners.

The word "Jaya," used in the above text of Brahaspati, means a wife (Patni).

The term "Jaya" used in the text of Brahaspati, explained.

With the exception of fixed property] This exception is applicable to a Patni who has not even a daughter, for, if it were to be held applicable to every widow generally, the passage would be inconsistent with that of Prajapati: "Having taken his moveable and *immoveable* property, the precious and base metals, the grains, the liquids, and the clothes, &c." para. 20.

A Patni not having even a daughter does not inherit immoveable property from her husband.

26. The inconsistency *cannot* be attempted to be removed by saying that the text of Brahaspati is applicable to a case where the husband dies undivided, or where the widow does not lead a virtuous life.(2)

The text of Brahaspati cannot be considered as applicable to a case where the husband dies undivided or where the widow does not lead a virtuous life.

(1). In Varadiperumal Udaiyan *vers.* Ardanari Udaiyan, the Madras High Court held that on the death of an undivided Hindu without leaving male issue, his property, unless previously disposed of, devolved on his surviving co-parceners, and that his widow was only entitled to maintenance—(I M.H.C.R. page 412). But see the Judgment of the Privy Council in Kattama Nauchear *vers.* the Rajah of Shevagunga (ix. Moor. I. C. 539), in which they have ruled that, by the law of inheritance prevailing in Madras and throughout the southern parts of India, the separately-acquired estate descends to a widow in default of male issue of the deceased husband.

(2). Mádhava considers this text of Brahaspati to relate to the prohibition of sale or other transfer of real property, by a widow, without concurrence of the heirs—Vay. May. chap. iv, sec. viii. para. 3.

27. To prevent any such construction being put upon the passage, the same author [Brahaspati] has stated :—"Even if virtuous and if partition have been made, a woman is not fit to enjoy real property." The object of this passage is to explain that real property being the means of subsistence among the descendants of a Hindu family, is inheritable only by a widow that has got issue, and that therefore a widow [Patni] having no issue, has no title to inherit the property although she may be virtuous and the family divided.

Such a construction incompatible with another passage of Brahaspati.

Reason why an issueless Patni has no title to inherit immoveable property.

28. The same author [Brahaspati] further says :—"After the death of the husband, the widow preserving [the honour of] the family, shall obtain the share of her husband so long as she lives; but she has not property [therein to the extent of] gift, mortgage, or sale."

A third passage of the same author restricting widows against making alienations, &c. of the property inherited by them.

Preserving the honour of the family] Preserving the honour of the line, in other words, virtuous.

Certain expression in the passage, explained.

29. The competency of a widow to make gifts for religious and charitable purposes, such as the maintenance of old and helpless persons, being sanctioned by law, the above passage must be held as contemplating the want of independence of a widow in making gifts, &c. for purposes not being religious or charitable, but purely temporal, such as gifts to dancers, and the like.(1)

The passage applicable to gifts, &c. not being religious or charitable.

30. A widow thus possesses independent power to make gifts for religious objects,(2) and therefore the same author

(1). Vyvahara Mayukha is of the same opinion as the Smruti Chandrika. He however attributes the passage referred to in this paragraph to Kátyáyana, and says that it is a prohibition of gift of money or the like, to the Bandi, Charana, and the like swindlers—V. M. chap. iv. sec. viii. para. 4.

(2). See Collector of Masulipatam *versus* Cavaly Vencata Narrainappah 8 Moo. I. A. page 529], in which the Privy Council have ruled :

1stly.—That by the Hindu law of inheritance a childless widow takes as heir, but it is only a special and qualified estate.

2ndly.—That if there be collateral heirs of the husband, the widow cannot

In respect of religious gifts, a widow possesses independent power. Passage of Brahaspati on the subject.

[Brahaspati] enjoins, by the following passage, the constant presentation of gifts by a widow for religious purposes. "A widow actively engaged in meritorious observances and fasts, constant in the duties of her widowhood, making daily religious gifts, even if wanting a son, shall reach the heavenly abodes."

A widow competent even to make a mortgage or sale for religious objects.

31. The daily making of religious gifts, as directed in the above passage, would be impracticable, if the widow were held to possess no independent power. It is hence to be understood that the law does not deny the independent power of a widow even to make a mortgage or sale, for the purpose of providing herself with funds necessary for the discharge of religious duties.

Passage of Kátyáyana directing a sonless widow simply to enjoy her husband's property with moderation until her death.

32. Kátyáyana declares: "Let the sonless widow, preserving unsullied the bed of her lord and abiding with her venerable protector Guroo,(1) enjoy with moderation the property until her death. After her, let the heirs take it."

Explanation of a certain expression in the passage.

With moderation](2) Patient of the control which the relations of her deceased husband may exercise over her in the disposal of wealth.

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alien the property except for special purposes, such as for religious or charitable objects, or those acts which are supposed to conduce to the spiritual welfare of her husband, in which circumstances she has a larger power of disposition than that which she possesses for purely worldly purposes, to support an alienation for which purpose, she must show actual necessity.

3rdly.—That the restrictions imposed by the Hindu Law on a widow's power of alienation of her husband's estate are inseparable from her estate and do not depend on the existence of heirs capable of taking on her death.

See also Judgment of the High Court in S. A. No. 222 of 1866 (M.H.C.R. vol. iii. page 116).

(1). There is another reading of this passage Vritai Stitha "Living virtuously" instead of Gurau Stitha, "Abiding with venerable protector." See note to Jim. Vah. chap. xi. sec. i. para. 56.

(2). With moderation] With abstemiousness, according to the commentators Crikrishna and Achyuta. See note to Jim. Vah. chap. xi. sec. i. para. 56.

33. This passage is applicable(1) to the case of undivided wealth which a widow (Patni) may herself take on account of her subsistence in consequence of her father-in-law and the like not being qualified to maintain her or continuing engaged in other concerns. If, on the contrary, the above passage were held to refer to divided wealth, it would become opposed to the ascertained principle of the text (para. 15) of Vrddha Menu and others.

To what case the above passage of Kátyáyana is applicable.

34. When the father-in-law and the like are qualified to maintain the widow and take themselves the property of the deceased undivided member of the family, they alone are to maintain the widow from the property so taken. Accordingly, Nareda:—"Whichever wife (Patni) becomes a widow and continues virtuous, she is entitled to be provided with food and raiment by the elder brother of the deceased or by her father-in-law or by a 'Gotraja,' (a member born in the same family) or any other person."

Where, in an undivided family, the surviving parceners are capable to maintain the widow and take themselves the property of the deceased, they alone are to maintain her from the property so taken. Passage of Nareda.

In order to maintain the widow, the elder brother, or any of the others above mentioned, must have taken the property of the deceased; the duty of maintaining the widow being dependent on taking the property.

The duty of maintaining the widow is contingent on taking the deceased's property.

35. Kátyáyana lays down an additional rule on the subject:—"But if her husband have departed for heaven, the widow obtains food and raiment; or [thu] she receives a share of the undivided wealth [Dhana] so long as she lives."(2)

Food and raiment, or a share of the undivided wealth may be given to a widow. Text of Kátyáyana.

(1). In the Judgment of the High Court in S. A. No. 81 of 1865 (M.H.C.R. vol. ii. page 402), this passage is cited as relating to the succession of a widow to the property of her husband, who died *divided* and without male issue.

(2). In the Judgment of the High Court in Regular Appeal No. 65 of 1864, M.H.C.R. vol. ii. page 337, it has been ruled that a woman divorced

A share of the undivided wealth] Such a share as would be necessary for subsistence without distress and for the performance of religious ceremonies [daily and occasional] within the competency of a female to perform, and requiring for their completion pecuniary aid.

Explanation of certain terms in the text.

36. The particle "Thu" used in the text has the sense of Va "or," and indicates an alternative. The second hemistich of the passage must therefore be read "Or she receives a share of the [undivided] wealth [Dhana"].

The object of the particle "Thu" used in the text, explained.

37. The term "Dhana" used in the text being simply indicative of *property* of any nature capable of affording the means of subsistence, &c., a portion of the landed property belonging to the family, yielding an income equal to the share of wealth above prescribed, may be assigned in lieu of *the share of the undivided wealth.*

In lieu of a share of wealth, a portion of landed property may be assigned to a widow.

38. The course provided in the first hemistich of the above text, para. 35 of Kátyáyana, namely, that of receiving food and raiment, refers to a widow not being a 'Patni;' the law providing, in her case, a small share of wealth only sufficient for maintenance.

The giving of food and raiment is applicable to a widow not being "Patni."

39. Nareda declares what is the minimum rate of maintenance payable in kind and in money. "A virtuous woman whose husband has died, receives every year a maintenance of 34(1) Adhakas and 40 Panas. 192 measures [Prastha](2) of grain make an Adhaka. Pana, is one of the Karsha standard.(3)

Nareda defines the minimum rate of maintenance.

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for adultery, who has continued in adultery during her husband's life and in unchastity after his death, is not entitled even to bare maintenance.

(1). In some copies of the Smruti Chandrika, the number of Adhakas is stated to be 24 instead of 34.

(2). A Prastha is explained to be forty-eight double handfuls. Some read Prasrithy "handful" instead of Prastha "measure."

(3). Vide Note to chap. ix. sec. i. para. 7 of this treatise for an explanation of the term of "Karsha Pana."

Pana equivalent to one-eightieth part of a Nishka.

40. In some countries, a Pana is considered as forming the eightieth part of a Nishka [a gold coin]. Therefore, wherever Pana is not current, one-eightieth part of a Nishka must be taken as the standard equal to a Pana.

Passage of Brahaspati allowing food or a portion of the landed property to a widow (not being a Patni) even where partition had been made.

41. Brahaspati, premising "Where partition had been made," says:—"Either food or a portion of the landed property may be given at will."(1)

"Food" denotes food and raiment.

Exposition of the text.

42. The purport of the text is, that in the case of a divided family, where the widow is not a Patni, entitled to inherit the property of her husband, she may, at the pleasure of the giver, receive either food and raiment to the extent specified [in para. 39] or a portion of the landed property capable of yielding an income equal to the share of wealth [referred to in para. 35].

Assignment of maintenance imperative.

43. The particle "Eva" used in the text indicates that the assignment of such maintenance is imperative. The course first mentioned [that is, giving food and raiment to the extent specified in para. 39] is applicable to a widow that does not do service to her father-in-law and the like. This will be seen in a subsequent passage also [para. 46].

Food and raiment are to be given to a widow not doing service to her father-in-law and the like.

Assignment made by one for maintenance is to be kept up by the others also. Passage of Brahaspati.

44. The same author [Brahaspati] further declares, by the following passage, that the assignment made by one for maintenance is to be kept up by the others also. "What has been given to a widow by means of landed property for her mainte-

(1). Vide para. 37 of this section as to the extent of this portion.

nance by her father-in-law, the others are not competent to resume on the death of the father-in-law."

45. The term "Father-in-law"—has been used in the text to indicate the giver of maintenance in general, and the words "landed property" include wealth of any description given for maintenance. It is hence to be understood that a maintenance assigned to a widow, even if it should consist of wealth [moveables], cannot be resumed by others.

Certain terms in the passage, explained.

46. Kátyáyana, however, says that it is, in some instance, resumable. She who is firmly engaged in doing service to her Guroo [that is, father-in-law and the like] is fit to enjoy the share assigned. Should she not perform the service, he shall order her only clothes and a morsel of food. In the latter case, it must be assumed that the share assigned for maintenance is to be resumed.

The assignment of a share on account of maintenance is resumable where the widow discontinues doing service to her father in-law and the like. Passage of Kátyáyana.

47. The same author also declares that the share assigned for maintenance is resumable even where the widow is addicted to a vicious course. "A widow who does injurious acts, who has no sense of shame, who squanders away the money, and who is bent upon committing adultery, is held unworthy of wealth [Dhana]."(1)

It is resumable in some other instances also. Another passage of the same author.

Wealth] Means wealth or a share of land assigned for maintenance, &c. The meaning is, that a widow, subject to any of the four vices above described, is not entitled to enjoy the maintenance so allotted. The term "Dhana" (wealth), used in the text, refers also to food and raiment.

48. Hence, Nareda:—"Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, that allowance may be resumed."(2)

Passage of Nareda on the same subject.

(1). See chap. ix. sec. ii. para. 24, where this passage occurs.

(2). Vide chap. xii. para. 11, where this passage occurs.

If they behave otherwise] If they pursue an incontinent course.

Explanation of certain terms in the passage.

That allowance] Wealth consisting of grain, clothes, and money, assigned for food and raiment.

May be resumed] May be taken back.

The text of Nareda directing food and raiment to be given even to a degraded woman applicable to a case where a wife has to be maintained *by the husband*.

49. The text of Menu, which declares: "The same rule applies to women [Yoshit] even if they are degraded. Food and raiment are to be given to them and they are to remain in a corner of the house," is applicable to a case where a wife has to be maintained *by the husband*.(1) This appears from the first hemistich of the text. Hence there is no inconsistency between this and the text of Nareda above quoted.

Where the widow is suspected of incontinency, a maintenance alone is to be given her, even if she should be a Patni and belong to a divided family. Passage of Harita.

50. Where a widow is suspected of incontinency(2) the mode prescribed by Harita is to be adopted even where the widow is of the rank of a Patni and belongs to a divided family. "If a woman becoming a widow in her youth, be

(1). See the Judgment of the High Court in O. S. No. 85 of 1863, (I M.H.C.R. page 375) wherein it has been ruled that "A Hindu wife is not entitled to maintenance if she leaves her husband without a justifying cause, and that the husband's marrying a second wife is not such justifying cause." See also S. A. No. 369 of 1862, (IM.H.C.R. page 372) in which a Hindu adulteress living apart from her husband has been declared not to be entitled to recover maintenance from him so long as the adultery is uncondoned.

(2). See *in the Goods of Dadoo Mania*, 1st September 1862, Ind. Jur. Oct. 25th, 1862, p. 59, before the High Court of Bombay, where Arnould, J., observed, as follows:—"As to the general doctrine that proved infidelity before widowhood disqualifies, and proved incontinence after widowhood divests the inheritance, the authorities seem to clash, (see Act XXI of 1850, and Taylor's Rep. 300). As to the nature of the proof of incontinence that disqualifies, there is again a discrepancy in the authorities. Sir T. Strange, page 136, after laying down the principle that 'an unchaste wife is excluded from the inheritance,' adds, that 'nothing short of actual infidelity in this respect disqualifies,' and the authorities collected in the appendix to which he refers, support this view. In all the cases we have been able to consult,

headstrong, a maintenance must, in that case, be given to her for the support of life."(1)

The term "headstrong" in the passage, explained.

Headstrong] Cruel, obstinate, and one against whom there is a balance of presumption of incontinence.

A passage of Menu, quoted.

51. The following is a passage of Menu which bears an appearance of inconsistency with the text of Vrddha Menu, para. 15, holding the widow (Patni) entitled exclusively to obtain her husband's entire share. "Should the eldest or youngest of several brothers be deprived of his allotment at the distribution or should any one of them die, his share shall not be lost; but the uterine brothers and sisters and such as were re-united after a separation shall assemble together and divide his share equally."(2)

Certain terms in the passage, explained.

Be deprived of] Be deprived either by degradation or entering the fourth order.

A passage of Nareda, quoted.

52. Nareda too, after premising "Whatever is the share of re-united parceners goes to themselves," says, "Among brothers, if any one die without issue or enter a religious order, let the rest of the brethren divide his wealth except the wife's separate property."(3)

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the proof of incontinence or infidelity seems to have been positive. The Mayukha, on the other haud, page 102, lays it down: 'That even a suspicion of incontinence is enough to reduce a widow's rights to that of mere maintenance.' This, as it seems to us, can hardly mean vague suspicion; it must mean a reasonably well-grounded suspicion, short of actual proof. In this case, for instance, had Rumea gone off with Sitaram alone and been proved afterwards to have been in company with him at a distance from her husband's residence, this would have constituted, as it seems to us, a case of suspicion sufficient to deprive her of the inheritance (on the authorities of the Mayukha). See note to Vy. May. chap. iv. sec. iv. para. 19."

(1). This passage is translated, as follows, in II Digest, 536 :—"A woman widowed and young is untractable; but separate property must always be given to women that they may pass their destined life."

(2). Vide chap. xii. para. 17, where this passage occurs.

(3). Vide chap. xii. para. 10, where this passage occurs.

53. The above two passages, namely, those of Menu and Nareda are, it is clear, applicable to the case of the wealth of *re-united parceners.* Hence, they are not inconsistent (with the text of Vrddha Menu, para. 15, above quoted).

The above passages of Menu and Nareda shewn not to be inconsistent with the passage of Vrddha Menu, cited in para. 15.

54. In conclusion, it is to be understood, that the law allowing a Patni to take the entire share of her husband, is applicable to the case of a parcener dying divided *and without re-union.* Accordingly, Sangrahakara, "Where brothers were divided and not re-united, the widow (Patni), abiding by the directions of her Guroo in respect of appointment,(1) takes the wealth."

A Patni inherits where her husband dies divided and without re-union. Passage of Sangrahakara.

55. The principle of Dharaiçvara, which imposes upon a widow inheriting the wealth of her husband, the condition that she should abide by the direction of her Guroo in respect of appointment, must be discarded as being strongly reprobated by Viçvarupa and others. Therefore, in the case contemplated by Sangrahakara, the only rule that can be recognized is that the qualifications described by Vrddha Menu, para. 15, are all that are required in a female to entitle her to inherit the whole estate.

Dharaiçvara's principle, discarded.

The qualifications described by Vrddha Menu are all that are required in a female to entitle her to inherit her husband's property.

56. It is provided in Çruti "Therefore, females and persons wanting in an organ of sense or member are incompetent to inherit."(2) The text, para. 15, of Vrddha Menu, above quoted, is not affected even by this Çruti. In the first place, the term "females" being used in the Çruti, together with *sons* wanting in an organ of sense or member,

Passage of Vrddha Menu shewn not to be affected by Çruti.

(1). This seems to be an appointment for the procreation of a son. See on this subject Mit. chap. ii. sec. i. para. 8, and note.

(2). Vide note to chap. iv. para, 10, where this Çruti occurs. See also chap. xi. sec. v. para. 3 of this treatise.

it may be supposed that the females referred to in it are *daughters*. Even granting that the term "females," as used in it, applies to every kind of females (whether a daughter or not), the Çruti in question is merely exaggeratory and refers consequently to females other than Patni and the like, whose competency to inherit has been *expressly* provided for. Thus all is unexceptionable.

Where there are several widows, they share equally their husband's property.

57. Where there are several widows (Patnis), it is proper that they should all take the inheritance of their sonless husband by dividing the same in equal shares among them.(1)

Those that injure the inheritance devolving on a Patni are to be chastised. Text of Prajapati.

58. Prajapati, by the following passage, provides that the king is to chastise those that injure the inheritance, which, as has been ascertained on an examination of all the Smrutis, devolves on a Patni. "Those near or distant kinsmen, who, becoming her opponents, injure the property of a woman, let the king chastise with the punishment of a robber."

(1). See Vy. May. chap. iv. sec. iv. para. 19, and sec. viii. para. 9, according to which, if there be more than one wife, they divide and take equal shares. See also *In the Goods of Dadoo Mania*, 1st September 1862, Ind. Jur. October 25th, 1862, page 59, before the High Court of Bombay, where Arnould, J., said: "This doctrine has been followed by the late Supreme Court, in a case of the goods of Chapa Judoo, decided on the 22nd of June 1861, of which we have been furnished with a note by the Chief Justice, where the Court, after consideration, and obtaining answer from the Castris of the Sadr Adalut and at Poona, held that, 'if there be more than one widow, each of them is entitled to an equal share of the property.' It appears from those answers that, although the author of the Mayukha cites no text in support of his opinion, such texts are to be met with in the Viramitrodaya, an authority of the Benares School, and Macnaghten's Principles of Hindu Law, a work of authority in Bengal. It is also said, page 19, that if there be more than one widow, their rights are equal. The case in Morton's Reports, page 314, handed up to us yesterday by Mr. Westropp, shews that this rule was acted upon by the Supreme Court in Calcutta as early as the year 1791, and in Morley's Digest (N. S.) vol. i. p. 180, [para. 15] we find an instance of its being acted upon in the North-Western Provinces in 1850. On these authorities, we hold that the widows in this case are *primâ facie* entitled to equal shares

SUMMARY (BY THE TRANSLATOR).

I. A widow inherits the entire property (moveable and immoveable) of her husband; but her title to inherit arises only where(1) her husband dies divided in estate, and not re-united with his parceners,(2) he leaves no son either principal or secondary,(3) the widow is of the rank of a Patni, (4)she is chaste, pious, and capable to perform religious duties beneficial both to herself and her deceased husband, and (5)she has a daughter or daughters.

II. A wife ranks as a Patni if she had been married in one of the approved forms of marriage.

III. A wife married in the form of Asura, &c. is not termed "Patni," she is called a "Dasi" or slave.

IV. Where a widow of the rank of a Patni is altogether issueless, that is, destitute of even a daughter, she inherits only the moveable property of her husband and not the immoveables.

V. Where there are several widows or Patnis, they all divide equally among them the inheritance of their sonless husband.

VI. The king is to chastise those that injure the inheritance devolving on a Patni.

VII. A Patni inheriting the property of her husband, possesses independent power to make gifts, mortgages, sales,

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of the property." In Bengal, two widows take the whole estate for life, and on the death of one, the whole survives to the other, upon whose death, it goes to the collateral heirs of the husband—I Morl. Dig. 313. In Madras, it has been held, that the eldest widow succeeds; the other widows being entitled during her life to maintenance only, the second widow succeeding on the death of the first—I M. Sel. Dec. 456, 457, and R. A. No. 1 of 1835; II Ibid, 44. But see Strange's Manual H. L. 2nd ed. page 326, where the author lays down that, in Southern India, the wives are viewed as on an equality and inherit equally; and consider the following passage from the Mitákshara:—"The singular number 'wife' signifies the kind; hence, if there are several wives belonging to the same or different classes, (they) divide the property according to the shares prescribed to them and take it." This passage appears in the Sanskrit copy of the Mitákshara in my possession, but has been omitted in Colebrooke's translation. This passage occurs between paras. 5 and 6, sec. i. chap. ii. of the Mitákshara.

&c. only for religious and charitable objects. She has no power to make gifts, &c. for purely worldly purposes.

VIII. Where the widow of one dying divided in estate and not re-united with his parceners is not a Patni, she has no right to inherit the property of her husband. She will, however, be entitled to food and raiment at the hands of her father-in-law and the like, who are bound to give her the maintenance, even though she does not do service to them. But if she be firmly engaged in doing service to them, she will be entitled to a share of the wealth or of the landed property of her husband sufficient for her maintenance and for the performance of religious rites. If, however, at any subsequent period, she discontinues performing the service, the shares so assigned will be resumed, and simple food and raiment will be given to her.

IX. Where a husband dies *undivided*, his estate is not inherited by his widow even should she be a Patni, but by his surviving undivided co-parceners, such as the father, brother, or the like.

X. If, in such a case, the parceners are disqualified to maintain the widow or continue engaged in other concerns, and the widow, in consequence, takes herself the undivided wealth of her husband, she is simply to enjoy the property for life (provided she leads a virtuous life), subject to the control of the relations of her husband.

XI. Where, however, the undivided parceners of her husband are qualified to maintain her, and take themselves the property of her husband, they alone are to maintain her from the property so taken.

XII. The giving of maintenance is not imperative where no property is taken.

XIII. Where the widow to be maintained is a Patni, a share of the undivided wealth or of the landed property is to be assigned to her, sufficient for her subsistence without distress, and for the performance of religious ceremonies within her competency.

XIV. But where the widow is not a Patni, a small share of the wealth sufficient only for food and raiment is to be given to her.

XV. Where a widow does injurious acts, has no sense of shame, squanders away the money, or is bent upon committing adultery, the share assigned to her for maintenance will be resumed, and she will not be entitled even to food and raiment.

XVI. The maintenance assigned to a widow, whether it consists of a share of the wealth or of the landed property, is not to be resumed even on the demise of the person who made the assignment, except in the instances above noticed.

XVII. A wife, though degraded, will be entitled to food and raiment at the hands of her husband during the latter's *life-time.*

XVIII. Where a widow is suspected of incontinency, she is to receive only maintenance for the support of her life, even should she be a widow of the rank of a Patni, and belong to a *divided* family.

CHAPTER XI.

SECTION II.

ON THE RIGHT OF THE DAUGHTER AND DAUGHTER'S SON.

Daughter inherits in default of widow. Passage of Brahaspati.

1. Brahaspati :—" The wife is pronounced successor to the wealth of her husband; and, in her default, the daughter."(1)

In her default] On failure of the wife.

Passage of Vishnu on the same subject.

2. Hence, Vishnu: "The wealth of an issueless man goes to the widow, and in her default, to the daughter."

Reason of the daughter's succession, explained by Brahaspati.

3. Brahaspati explains the reason of such succession. " As a son, so does the daughter of a man proceed from his several limbs.(2) How then should any other person take her father's wealth ?"

The difference between a son and daughter in point of springing from the father's limbs, pointed out.

4. In springing from the limbs of the father, a daughter is equal to a son. The difference, however, is this. In the procreation of a son, the contribution of the father's part is greater; whereas, in that of a daughter, it is less, it being declared " A male child is procreated, if the

(1). See Perammal *versus* Vencatammal, I M.H.C.R. page 223. in which it is held that where A had two wives, B and C, and B pre-deceased A, leaving three daughters, and C survived A and was childless, C succeeds to A's property in preference to the three daughters.

(2). Proceed from his several limbs] This is an allusion to a passage of the Vedas, which is quoted by Baudháyana. It is addressed by a father to his son :—" From my several limbs, thou art distilled; from my heart, thou art produced; thou art indeed self, but denominated son; mayest thou live a hundred years." See note to Jim. Vah. chap. xi. sec. ii. para. 14.

seed predominate, but a female child is procreated if the woman contribute most to the fœtus." Hence a daughter is pronounced equal to a son to a certain extent.

Explanation of certain terms in the passage of Brahaspati.

5. Any other person] These terms, which are used in the text, para. 3, above quoted, exclude the son and the widow, who are preferable heirs, and include the father and the like.

Exposition of the passage of Brahaspati.

6. The purport of the text of Brahaspati is this: how could these persons, *i. e.* the father and the like, take the property of a sonless man, while the daughter is alive?

Passage of Menu on the same subject.

7. Accordingly, Menu :—"The son of a man is even as himself, and the daughter is equal to the son. How then can any other inherit his property, notwithstanding the survival of her, who is, as it were, himself?"

Who is as it were himself] Who is equal to the son, who is as it were himself.

Objector's argument.

8. The objector says: No reason has been adduced to show why the right of succession of a daughter should be postponed to that of *a secondary son* and *widow;* the reason stated by Brahaspati (in para. 3) simply accounts for her title to succeed *on failure of a begotten son.* This is true, but

Reply.

Brahaspati, in giving the reason, intends that the same must be taken to apply where a daughter succeeds in default of a secondary son and widow.

Nareda's passage on the subject of the succession of a daughter and the reasons for the same.

9. Nareda, conscious of the justness of the proposition, that a daughter should succeed on failure of a secondary son and widow, says, for the information of the uninstructed, "On failure of male issue, the daughter inherits, for, she is equally a cause of perpetuating the race." The reason why the daughter is equally a cause of perpetuating the race, the same author

explains by saying "since both the son and daughter are the means of prolonging the father's line."

Exposition of the passage.

10. The meaning is, that the son and daughter both give birth to children, by whom the prosperity of their own parents is promoted. Here the equality contemplated between a son's son and a daughter's son must be understood to be an equality *in point of efficacy*, both the sons being *in their nature*, unequal. There is no equality between them in point of clearing off the debts and inheriting the assets of the deceased; it being declared "Debts must be paid by sons and son's sons."(1) Referring to a grandfather's property, it has further been declared "The ownership of the father and son is the same in it."(2) The superiority of a son's son being, by these texts, declared in respect of assets and debts, the equality contemplated by the text of Nareda, above quoted, between a son's son and a daughter's son must be understood to consist in conferring benefits not temporal, that is, in the performance of Çradhas; it being declared by Vishnu "In offering oblations to the manes, the daughter's sons are considered as son's sons."(3) The daughters, therefore, stand conspicuous in the line of succession by reason of their conferring benefits by means of their descendants.

In what respect a son's son and a daughter's son are deemed equal, and in what respect unequal.

Reason shewn why a daughter should not inherit in preference to a widow (Patni).

11. It cannot, however, be hence said, that where there is no male issue, a daughter inherits in preference to a widow (Patni); the latter being in her own person competent to associate in the performance of religious sacrifices (Agnihotra) &c., which are acts capable of conferring

(1). See chap. ix. sec. iii. para. 24 of this treatise.

(2). See chap. viii. para. 18 of this treatise.

(3). It has been held that a grandson, through a deceased daughter, is entitled to perform religious ceremonies for the benefit of the soul of his deceased grandfather, on the failure of a trustee, in preference to a daughter who is a *childless* widow, these two being the only issue of the deceased—Sibchunder Mullick *vers.* Sreemutty Treepoorah Soondry Dossee, Fault. 98, S.H.L.B, page 87.

spiritual benefits on the deceased. Therefore, the term "male issue" used in the passage "on failure of male issue, the daughter inherits, para. 9," must be considered by synecdoche to include a Patni (widow) also.

Objector's argument against the right of succession of a daughter in preference to a father.

12. The objector says, the father, by performing Çradha to the deceased son, is personally capable of conferring on him benefits spiritual, and is hence preferable to a daughter. It may therefore be said that, in default of a widow, the text "the estate of one who leaves no male issue is inherited by the father"(1) applies. How, under this circumstance, could the daughter be said to inherit in preference to a father?

Objection met.

13. Reply. This is not right. The passage "how then can any other inherit his property, notwithstanding the survival of her, who is as it were himself, para. 7," is in itself sufficient to meet this objection. Although the daughter, when compared with the father, is somewhat inferior in her capability to confer spiritual benefits on the deceased, yet, in point of consanguinity, she is more closely connected with him. Thus, on both these grounds, she is certainly preferable.

The objector then asks whether a father cannot succeed, *in default of a daughter*.

14. The objector again says. If so, let it be declared that in default of a daughter, the text "The estate of one who leaves no male issue is inherited by the father" applies.

Reply in the negative.

15. No, it cannot apply here too. A daughter's son being the offspring of a daughter, is more nearly connected with the deceased than a father.

A daughter's son is the heir. Passage of Vishnu.

Vishnu, too, has declared: "Where there exists no son or grandson, the daughter's son inherits the wealth. In offering oblations to the departed ancestors, the daughter's sons are considered as son's sons.

(1). See chap. xi. sec. i. para. 1 of this treatise.

16. Daraiçvara, Davasvamy, and Davarata, are of opinion that the texts of Brahaspati and others which propound the daughter's title to succession in default of the widow refer to an *appointed* daughter (putrika).(1) But their opinion is, it must be observed, the result of the exaggerated notion, which they (Daraiçvara and others) entertain of their own knowledge of the sacred Codes of Law, and must be understood to have been rejected by Brahaspati and the other authors themselves, because of their advancing arguments in their respective texts (paras. 3, 7, and 9) in favour of the daughter's title to inheritance.

The texts of Brahaspati and others propounding the daughter's title to succession do not refer to an appointed daughter. The opinion of Daraiçvara and others on the subject, rejected.

17. Vasishtha says, "The appointed daughter is considered to be the third description of sons." The appointed daughter thus ranking herself among secondary sons is entitled, like the Kshétraja (son of the wife) and the like, to inherit the property of her father on failure of a begotten son even though the widow should be alive. This is under the text "Not brothers nor parents, but *sons* inherit the property of their father."(2) While thus, an appointed daughter is entitled to succession even in preference to a widow, her inheriting the wealth on failure of a widow must be unquestionable on the analogy of the loaf and staff.(3) Under this circumstance, what necessity was there for Brahaspati and others, to have adduced *reasons* (as they have done in the texts cited in paras. 3, 7, and 9), for a daughter's succession *after* a widow. By this alone, the opinions of Daraiçvara and others, above

Reasons for the rejection.

(1). This is a daughter becoming, by special appointment, a son —Mit. chap. i. sec. xi. para. 3—Note.

(2). See chap. x. para. i. of this treatise.

(3). On the analogy of the loaf and staff] "If a staff, to which a loaf is attached, be taken away by thieves, it is inferred that assuredly the loaf also has been stolen by them." See also notes to chap. ix. sec. ii. para. 15 and chap. xi. sec. vi. para. 4 of this treatise for an explanation of this example of analogy.

quoted, would clearly appear to have been rejected by Brahaspati and the other authors. It is therefore unnecessary for us to make any further attempt to upset the opinion.

Objector's arguments in support of the opinion of Daraiçvara and others.

18. The objector says, Nareda, referring to a sonless widow, declares "the maintenance of the daughter of such a widow is enjoined to be made out of her father's share, she will take a share until she is initiated. After that, her husband shall support her." The meaning of the passage is this. If a deceased sonless widow should leave a daughter, then the father's wealth must be considered as intended for the subsistence of such a daughter. Therefore, the daughter, till her marriage, enjoys her father's wealth for the sake of her support only. She is not competent to use or alienate it at pleasure. Hence, it would appear that, as a rule, all unmarried daughters, in default of the mother and brother (that is, the widow and son of the deceased) do not *inherit* (but simply enjoy for the sake of subsistence till marriage only) their father's wealth. The texts, therefore, (cited in paras. 3, 7, and 9), which, as an exception to the above rule, hold a daughter competent to *inherit* must be considered as referring to an *appointed daughter*, for, if they were to be held to apply to all daughters generally, the application of the exceptional passages would become as universal as that of the rule itself; they could therefore be no longer called exceptional passages, and would become consequently meaningless. Hence, the opinion of Daraiçvara and others (who hold that the texts in question are applicable to an appointed daughter only) must be adhered to.(1)

Reply.

The passage of Nareda quoted by the objector applicable to a re-united family

19. Reply. The above objection would be sound, if the text of Nareda (on which it is founded) were applicable to a divided family; but a careful examination of the text clearly shews that it refers to a re-united family. Therefore, all the

(1). See chap. xii. para. 11 of this treatise.

passages (paras. 3, 7 and 9) which, in the case of a divided family, allow inheritance to daughters, must be considered to be general and not exceptional passages, and to suppose that they are applicable only to the case of an appointed daughter, there is not the slightest ground. This much is sufficient to meet the objector's argument.

Passage of Kátyáyana giving preference to daughters unmarried or unprovided over other daughters.

20. Kátyáyana, however, draws a distinction in the succession of daughters to their father's wealth as enjoyed by the above passages (paras. 3, 7 and 9): "Let the widow succeed to her husband's wealth, provided she be chaste, and in default of her, the daughter inherits if *unmarried* or *unprovided*."

Exposition of the passage.

21. By this, it is inferrible that the above passages (paras. 3, 7 and 9) have reference to daughters either unmarried or unprovided. "Unprovided" here means unprovided with wealth and not unprovided with offspring, such as barren daughters and the like, for, daughters of the latter description are not(1) at all entitled to inherit their deceased father's estate, they being incapable to confer on him benefits spiritual through the medium of their offspring.(2)

"In default of her" means here not in default of a Patni generally, but in default of that kind of Patni, who is not tainted with incontinence.

A daughter succeeds in default of a chaste wife, Patni. Passage of Sangrahakara on the subject.

22. It must hence be understood that a daughter is entitled to succession not on failure of a Patni generally, but on failure of a Patni possessed of continence. Hence Sangrahakara, "An appointed daughter inherits in default of *such* a wife."

(1). Mitákshara prescribes no such exclusion, but according to Jim. Vah. barren, son-less, or widowed daughters are excluded from inheriting from the father—Jim. Vah. chap. xi. sec. ii. para. 3.

(2). Vide note to para. 10 of this section.

23. The meaning is, that an appointed daughter inherits not on failure of a Patni generally, but on failure of a Patni possessing the qualifications described as essential to taking the inheritance.

Exposition of the passage.

24. As for that portion of Sangrahakara's text which says that an *appointed* daughter inherits, it must be overlooked as being already discarded (paras. 16 to 19).

Sangrahakara's allusion to an appointed daughter, must be rejected.

25. Some, however, say, that on failure of a Patni generally the estate goes to the daughter and on failure of a Patni possessing the special qualifications essential to inheritance, the estate goes to the father and the like under the text "the estate of one who leaves no male issue is inherited by the father, &c."(1) This opinion is also to be rejected for the same reason as above noticed.

The opinion of some as to when the estate goes to the daughter and when to the father and the like, also rejected.

26. Brahaspati describes the qualifications necessary in a daughter inheriting property *after a widow* and also those necessary in a daughter inheriting *after a chief or begotten son*. "Being of equal class(2) and married to a man of like tribe, being virtuous and devoted to obedience, and being formally appointed or not appointed(3) to continue the male line, she shall take the property of her father."

Passage of Brahaspati describing the qualifications necessary in a daughter to entitle her to inherit.

27. Being of equal class] Being of the same class with the father, *i. e.* born of a wife of the same class with the father.

Exposition of the passage of Brahaspati.

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(1). See chap. xi. sec. i. para. 1 of this treatise.

(2). Mitákshara holds that daughters inherit whether they be alike or dissimilar by class—Mit. chap. ii. sec. ii. para. 1.

(3). A daughter becomes formally appointed when she is given in marriage with an express stipulation in this form "The child who shall be born of her shall be mine for the purpose of performing my obsequies." But in the case where she was in thought selected for an appointed daughter, she is so without a compact and merely by an act of the mind—Hemadri. Note to Mit. chap. i. sec. xi. para, 3.

The four epithets (being of equal class and married to a man of like tribe, being virtuous and devoted to obedience) first mentioned in the above passage, refer to a daughter claiming inheritance *after* a widow, and the two epithets (being formally appointed or not appointed) last mentioned, to a daughter claiming inheritance *before* a widow.

Being formally appointed or not appointed to continue the male line] Here, an appointed daughter (whether formally appointed or not) must be understood.

The term "daughter" (which has not been expressly mentioned in the passage) must be understood before the other four epithets.

The particle "Va" (or) is used in the passage to denote an alternative. Hence the meaning of the passage is, as follows. The estate of one destitute of a begotten son or son's son is inherited *before* a widow by an appointed daughter of either of the two kinds above mentioned, *i. e.* (whether formally appointed or not appointed); but other daughters being of equal class and possessing the other three qualifications next mentioned in the passage, inherit the estate *after* the widow.

An unmarried daughter takes before a daughter unprovided.

28. The conclusion therefore is, where there is a competition between a daughter unprovided and one unmarried, both being of the same class with their father, and possessing the other qualifications mentioned in the text, the unmarried alone first takes; the maintenance of such daughters out of the wealth of the father being indispensable. On failure of such a daughter, the unprovided takes, such a daughter being destitute of the means of subsistence, owing to the inability on the part of her husband to maintain her, although he is bound to do so. In default of unprovided daughters, the daughter provided or enriched and possessing the qualifications of equality of class, &c. takes, such a daughter, though

In default of unprovided daughters, the daughters provided take.

provided, being competent to inherit. On failure of daughters, the daughter's son inherits, he being the offspring of the daughter.

On failure of daughters of *any* of the above kinds, the daughter's son inherits.

SUMMARY (BY THE TRANSLATOR).

I. Daughters inherit in default of the widow (Patni).

II. Of them, the unmarried daughters take first, then the unprovided, and lastly the daughters provided.

III. A daughter inheriting must have been born of a wife of the same class with the father and married to a man of the like tribe. She must also be a virtuous woman and devoted to obedience.

IV. A barren daughter does not inherit.

V. On failure of daughters, the daughter's son inherits.

CHAPTER XI.

SECTION III.

ON THE RIGHT OF SUCCESSION OF PARENTS.

After a daughter's son, the parents succeed. Passage of Yájnavalkya.

1. On failure of the daughter's son, none being more nearly related to the deceased than the father, the text "The estate of one who leaves no male issue is inherited by the father"(1) here applies, and the wealth accordingly becomes inheritable by the father. Likewise, on this very occasion, none being more nearly related to the deceased than the mother, the text "Of a son dying childless (and leaving no widow) the mother shall take the estate" also applies, and the wealth becomes inheritable by the mother. Therefore Yájñavalkya says, "The wife and the daughters also, *both parents* (Pitarau), brothers,(2) &c."

Exposition of the passage.

2. The particle "Cha" (also) used in the text, indicates that it is only after the daughter's son that the mother and the father simultaneously succeed to the estate. The opinion of Yájña-valkya must be understood to be that there is no good ground for giving precedence to one over the other as between the parents.

Some authors give preference to a mother over a father.

3. Some that pretend to be learned, in ignorance of the above view, argue that because a mother confers greater benefits on the son by bearing the child in her womb and nurturing him during his infancy, and because it is declared that "a mother surpasses a thousand fathers

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(1). See chap. xi. sec. i. para. 1 of this treatise.

(2). Mit. chap. ii. sec. i. para. 2.

in point of veneration," the mother alone succeeds to the estate notwithstanding the existence of the father. This argument, however, is not sufficient to justify the mother's claim to succeed in preference to the father; the father, too, contributing in several ways to the good of the son, and imparting learning to him; and it being also declared "But of those two, the father is pre-eminent, because the seed is considered important."

Their opinion rejected.

4. Others argue in a different way. They say that the father is a common parent to the sons of a rival wife also, but the mother is not so; and that hence the mother's propinquity is more immediate compared with the father's. This argument, too, is a mere prattle. As between a mother and father, there can be no distinction in respect of propinquity to the son. By reason of the father being a common parent to many sons, his affection towards each son, founded on direct consanguinity, is in no way diminished.

A mother and father are both alike in point of propinquity to the son.

5. The same authors further argue that as the word "mother" stands first in the regular compound (mátá-pitarau) "mother and father" when not reduced to the simpler form "pitarau" "parents" (by the omission of one term and retention of the other, Ekacesha),(1) the mother takes the estate in the first instance. This is also an insipid argument; for, in the instance of the phrase "The two sacrifices 'Sárasvatań,'" it has been shewn in the fifth chapter of Mimamsa, that there is no rule apparent in the phrase itself as to the order in which the above two sacrifices are to take place, but that they are to be performed in the order in which they have been set forth in the

Preference cannot be given to the mother's claim on the ground of her name occurring first in the regular compound mátá-pitarau.

(1). This is an allusion to the etymology of pitarau "parents," it means the omission of one term and retention of the other. When the word pitr "father" occurs with mâtr "mother," it may be retained and the other rejected. This is an exception to the general rule of composition. It is optional, and the regular form may be retained in its stead. Example: Pitarau "two parents," or mátá-pitarau 'mother and father'—Panini, 1, 2, 70 and 2, 2, 29, 34.

enumeration of sacrifices. No order is thus observed in the performance of the sacrifices with reference to the word which stands first in the phrase into which the complex term "Sárasvataú" is resolvable. Accordingly, in the present instance also, the order of the terms in the phrase into which the complex term "Pitarau" is resolvable, is not sufficient in itself to accord a priority of claim to the mother.

The opinion of Crikara that both the parents simultaneously take the inheritance and divide it among them, disapproved.

6. Çrikara propounds that both the parents may divide between them and take the inheritance. This is also improper; the texts (para. 1) "The estate of one who leaves no male issue is inherited by the father" and "Of a son dying childless (and leaving no widow) the mother shall take the estate," conferring on the father and mother respectively rights quite independent of each other, as is the case with the sacrifices of paddy and barley.

The opinion of a third class of authors advocating the propinquity of the mother, censured.

7. A third class of authors advocate the greater propinquity of the mother, by saying that such propinquity is inferrible from the text "[The property] of a uterine brother (is taken by) the uterine brother,"(1) by which the share of a uterine brother is said to go to his uterine relation by reason of the community of womb. This, however, is an argument as weak as the hold of a Kuca grass. One may be more attached to his uterine brother (from being the offspring of the same mother) than to his brother by a different mother; but what superiority could a mother possess over the father in respect of propinquity of relationship to the son, the author of the present work is unable to conceive.

The necessity of stating an order in the succession of the parents, pointed out.

8. Therefore, if it be asked here, what is the order of succession where both the parents are alive, it is necessary that the order should be stated. Çamboo,

(1). See chap. xii. para. 10 of this treatise.

however, says that no order need be stated, for, whatever is taken by either of the two parents out of the common property is for the benefit of both of them. This is not right. Whatever the mother takes, she takes for herself(1) *like* (2) the Stridhana called "Adhyagni" and the like, and not for the benefit of both herself and her husband. Therefore, an order in their succession must certainly be stated.

Law gives priority of succession to the father. Passage of Brhat Vishnu.

9. We now proceed to state it. There being no reason for giving preference to one over the other, the precept alone must be relied upon in the matter. The law gives priority of succession to the father.(3) Brhat Vishnu, premising that the wealth of a sonless man goes to the widow, in default, to the daughter, says, "In default, to the *father*, and in default to the *mother*."

Exposition of the passage.

10. Although, in this passage, the father is said to inherit the property of a sonless man, in default of the daughter, yet, as reasons have already been shewn why the daughter's son should inherit in default of the daughter, it must be understood that the succession of a father does not come in until the failure of daughter's sons. It must further be noticed that a daughter's son being connected with the line of the daughter herself, a separate mention of him in the order of heirs was considered unnecessary by Brhat Vishnu.

SUMMARY (BY THE TRANSLATOR).

I. In default of the daughter's son, the parents inherit.

II. But of them, the father takes first and then the mother.

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(1). The High Court in their Judgment in S. A. No. 81 of 1865 (II M.H.C.R. page 402), have ruled that a mother inheriting from her son has not an absolute property in the estate but only a life-interest without power of alienation.

(2). This shews that the inheritance is not *in itself* a Stridhana. Vide on this subject note to chap. ix. sec. i. para. 16.

(3). This is the doctrine of Jim. Vah. chap. xi. sec. i. para. 5, secs. iii. and iv. I Morl. Dig. 321. According to the Mitákshara, the mother succeeds *before* the father—Mit. chap. ii. sec. iii. para. 1—5 and Note.

CHAPTER XI.

SECTION IV.

ON THE RIGHT OF SUCCESSION OF BROTHERS.

Uterine brother succeeds in default of a mother.

1. On failure of the mother, the property devolves on the uterine brother, his propinquity to the deceased being greater by reason of both of them having been born of the same mother.

On failure of a uterine brother, a half brother succeeds.

2. On failure of the uterine brother, the wealth goes to the half-brother or brother by a different mother.

Passage of Yájnavalkya on the subject.

3. Therefore, Yájñavalkya, in his order of succession, which is founded on reason, says: "Both parents, brothers likewise."(1)

The term "brothers" used in the passage, explained.

4. The word "brothers" refers in the first place to uterine brothers, they being more nearly related to the deceased than a half-brother.

Exposition of the passage.

5. The rule of Yájñavalkya hence is, that the wealth of a sonless man goes, on failure of a mother, to a uterine brother. The same author, by the use of the general term "brothers," while the mention of only "a uterine brother" would have been sufficient, must be understood to have laid down the further rule that, in default of a uterine brother, a brother of the half blood, that is, by a different mother, succeeds.(2) There are, however, exceptions to the above rule in two instances, which will be presently noticed.

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(1). Mit. chap. xi. sec. i. para. 2.

(2). The author of Vyv. May. censures the preference here given to the brothers of the half blood before the nephews, being sons of the brothers of the whole blood—Vyv. May. chap. iv. sec. viii. para. 16.

Passage of Kátyáyana allowing the succession of a brother *before* and of a grandmother *after* a mother.

6. Kátyáyana:—"If a divided member should die, his wealth, in default of male issue, will be taken by the father, or brother, or mother, or then [atha] father's mother, in due order."

Father's mother] Mother of the father of the deceased divided son, or, in other words, his grandmother.

The phrase "In default of male issue" used in the passage, explained.

7. The phrase "In default of male issue" has been used to denote the failure of persons more nearly related to the deceased than the father. The meaning hence is that, in default of heirs ranging from the son to the daughter's son, who are more nearly related to the deceased than the father, by reason of their conferring on him benefits temporal and spiritual, the father takes the estate in the first instance.

The particle "Va" used in the passage, explained.

8. The particle "Va" [or] which has been thrice used in the above passage, indicates an alternative and has reference to defaults occurring among heirs; a vested interest such as "Svamiem" [ownership] not being capable of existing at one and the same time in one or the other of the heirs [enumerated] indiscriminately, on the principle that a thing cannot have an indeterminate existence.

Substance of the passage given.

9. Hence, the substance of the passage is this. In default of the father, the brother inherits; in default of him, the mother; in default of her, the grandmother. The phrase "In due order" used in the passage, means in the order stated.

Passage of Menu in support of that of Kátyáyana.

10. Menu, too, likewise, in the instance of a deceased divided member, having by the use of the phrase "without male issue" adverted to the absence of a son, widow, daughter, and daughter's son, who are all more nearly related to the deceased, propounds the succession of the father, brother, mother and grandmother by a Çloka and

a half. "Of him who leaves no son, the father shall take the inheritance, or the brothers. Of a son who dies without issue, the mother shall take the inheritance, and the mother also being dead, the father's mother shall take the heritage."

The phrase "without issue," explained.

11. The phrase "without issue" is here indicative of the absence of the son, widow, daughter, and daughter's son.

The passages of Kátyáyana and Menu not to be supposed to be inconsistent with the passage of Yájnavalkya.

12. It cannot be supposed that the above texts [paras. 6 and 10] of Kátyáyana and Menu, shewing as they do, the compact series of heirs from the father to the grandmother, are not the *results* of *reasoning* on the ground that they are inconsistent with the order laid down in the text [para. 3] of Yájñavalkya, which is founded on reasoning.

Passages of Kátyáyana and Menu are intended not merely to enumerate the heirs, but to show their order of succession.

13. Some say that the text of Yájñavalkya is the only precept shewing the *order* of heirs; it being expressly declared at the conclusion of the passage(1) "On failure of the first among these, the next in order is indeed heir;" and that therefore the texts "Of him who leaves no son, the father shall take the inheritance, &c. [para. 10]," which are inconsistent with the above text of Yájñavalkya, are intended merely to enumerate the heirs and not to show their order of succession. This objection is also to be overlooked; the order of succession being expressly indicated in the above texts [paras. 6 and 10] of Kátyáyana and Menu by the use, in the former, of the phrase "In due order," and in the latter, of the phrase "And the mother also being dead."

Brahaspati reconciles the inconsistency between the passages of Kátyáyana and Menu, and the passage of Yájnavalkya.

14. Brahaspati, however, by the following passage, reconciles the inconsistency between the texts [paras. 6 and 10] of Kátyáyana and Menu, and that [para. 3] of Yájñavalkya, by pointing out the case in which a brother takes the succession prior to a mother

(1). Mit. chap. ii. sec. i. para. 2.

as laid down in the texts of Kátyáyana and Menu. "Of a deceased son who leaves neither wife nor male issue, the mother must be considered as heiress, or, *by her consent, the brother may inherit.*"

15. The term "widow" comprehends by synecdoche the daughter, daughter's son, and father, who constitute the series of heirs prescribed in the text of [Yájñavalkya] founded on reasoning. It must, therefore, be understood that the son referred to in the above text of Brahaspati is one that dies leaving no son, widow, daughter, daughter's son, or father.

The term "widow" used in the passage of Brahaspati, explained.

16. The conclusion hence is, that the consent of the mother and the existence of the grandmother are the two instances (1) in which exceptions to the rule contained in the passage "Both parents, brothers likewise," are to be observed in the manner laid down in the texts of Kátyáyana and Menu.

The consent of a mother essential to a brother succeeding before her. A grandmother, where she exists, succeeds after the mother.

17. Some, however, say that, in the compact series of heirs from the mother to the nephew shewn in the text "Both the parents, brothers likewise, and their son," there is no place for the grandmother; and that therefore she must succeed *after* the nephew. They further say that this will be inconsistent with no texts of law, the succession of a grandmother being nowhere expressly provided. This opinion is also to be rejected, for, the succession of a grandmother is not unprovided. On the contrary, the place which a grandmother is to take in the order of succession has, as already noticed, been expressly pointed out in the above texts of Kátyáyana and Menu [paras. 6 and 10], in the former, by the use of the term "Then [atha]," before the word "grandmother," and, in the latter, by the phrase "And the mother also being dead." The order

The opinion of some objecting to the above construction, rejected.

(1). These are the two instances referred to at the conclusion of para. 5.

prescribed by these texts must therefore be considered as forming an exception to, and interfering with, the compact series of heirs laid down in the text [of Yájñavalkya] founded on reasoning.

Inconsistency between the texts of Yájnavalkya and that of Cankha and Likhita, reconciled.

18. Çankha and Likhita say:—"The wealth of one dying sonless goes to the brothers, and in default of them, the parents take it."(1) This, on the law of rules and exceptions,(2) refers to one dying, not divided, but re-united. Thus, there is no inconsistency.

Passage of Brahaspati noticed and construed without inconsistency.

19. Brahaspati says:—"In default of the son, the widow takes; in default of the widow, the uterine brother; in default of him, the dayadies [kinsmen, but literally signifying those that take the heritage 'Daya']. The wealth afterwards goes to the daughter's son." This passage, however, is intended to exclude a uterine brother from succession *before* a widow and not to place a uterine brother *before* a daughter, who may be said to be included in the term "Dayadi" by reason of her taking the heritage, for, if the latter were the case, the passage would become inconsistent with the same author's [Brahaspati] text. "As a son, so does the daughter of a man proceed from his several limbs, &c."(3)

Passage of Devala containing an enumeration of heirs.

20. Devala says:—"Next, let the brothers of the whole blood divide the heritage of him who leaves no male issue, or daughters equal [*i. e.* appertaining to the same tribe], or let the father if he survive, or [half] brothers belonging to the same tribe, or the mother, or the wife, inherit in their order."

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(1). See chap. xii. para. 25 of this treatise.

(2). In this case, the text of Yâjnavalkya: "The wife and the daughters also, &c." is the exception, and applies to the case of a divided family. The texts of Cankha and Likhita which is the rule, applies therefore to cases of divided families, but re-united, on the principle that a rule embraces all cases which are not specially excepted.

(3). See chap. xi. sec. ii. para. 3 of this treatise.

How the passage is to be construed.

21. Although, from the way in which this passage is worded, it might seem that the several heirs therein enumerated are to take the inheritance in the order in which they have been set forth, yet, in order to obviate the inconsistency of the passage with the import of all the other passages above quoted, it must be construed (without regard being had to the order therein mentioned) thus: let the wealth of him who leaves no male issue be taken by the wife of the rank of a Patni, or let the daughters of equal tribe divide among them, or let the surviving father take it. The use of the term "surviving," which would otherwise become meaningless, indicates that, in case of the father not surviving, the mother succeeds. The mother, therefore, takes the heritage on failure of the father; then the uterine brothers and brothers belonging to the same tribe take in their order, *i. e.* the uterine brothers take first, and then the brothers of the half blood but of the same tribe. This is the way in which the above passage of Devala is to be construed, and the passage itself must be understood to refer to cases where there may exist neither a mother's consent nor a grandmother.

Passage of Kátyáyana shewing the order of heirs.

22. On the same subject, Kátyáyana lays down the order of succession in an easily intelligible form. "The widow [Patni] being a woman of honest family, or the daughters, or, on failure of them, the father, or the mother, or the brother, or [his] sons, are pronounced to be the heirs of one who leaves no male issue.

The term "sons" used in the passage, explained.

23. The term "sons" used in the text, means the sons of the brother alone, as that is the term immediately preceding "sons" in the text. It has therefore been said by Yájñavalkya: "Brothers likewise and *their sons.*"

Sangrahakara's passage shewing the order of succession, rejected.

24. Sangrahakara says:—"In default of such a daughter, the mother takes the inheritance, although the father, the son of a step-mother, or his son, may be alive.

In default of such a mother, the father's mother takes the inheritance, although the father, the son of a Kshatriya mother, or his son may be alive. In default of the grandmother, the father takes the inheritance." As this passage is founded on the reasoning of Daraiçvara, and that reasoning has been refuted by Viçvarupa and others, the passage is to be overlooked as not based on sound arguments.

Brothers of the whole blood take the inheritance before brothers of the half blood.

25. The same author again says:—"Where there are two kinds of brothers, one of the whole blood and the other of the half blood, the brothers of the whole blood take the inheritance to the exclusion of those of the half blood." This passage is to be countenanced as founded on sound reason.

Likewise, the son of a uterine brother succeeds before the son of a half brother.

26. In the case of brother's sons also, the same rule applies where there is a competition between the son of a brother of the whole blood and the son of a brother of the half blood. Therefore, on failure of the son of a uterine brother, the son of a brother by a different mother takes the inheritance.

SUMMARY (BY THE TRANSLATOR).

I. On failure of the mother, the uterine brother inherits, and in default of him, the half brother.

II. By consent, however, of the mother, the brother may inherit before her.

III. Where a grandmother exists, she inherits after the mother, and before the brother.

IV. On failure of brothers, their sons inherit, the sons of the brothers of the whole blood being preferred to those of the brothers of the half blood.

CHAPTER XI.

SECTION V.

ON THE RIGHT OF SUCCESSION OF KINSMEN, DISTANT KINSMEN, AND COGNATE KINDRED.

Gotrajah succeed where there are not even brother's sons. Passage of Yájnavalkya.

1. If it be asked who succeeds if there be not even brother's sons, Yájñavalkya says :—"Gotrajah [Gentiles](1) or kinsmen, sprung from the same family with the deceased." Add here "take the inheritance."

How the term "Gotrajah" used in the passage, is to be construed.

2. The term "Gotrajah" [though general in its signification], on the analogy of Beeves and Oxen(2) excludes the father, brother and his son, who have already been separately noticed, and comprehends the son of the grandfather and such other persons as are sprung from the same family. The term "Gotrajah" further excludes the daughter of the grandfather and the like females, it being *primâ facie* a complex of two plural terms [Gotrajah cha, Gotrajah cha "Gentiles and Gentiles"] of the masculine gender formed by omitting one and retaining the other. Gotrajah, according to Sanskrit *Grammar*, admits also of the assumption that it is a complex of two terms of different genders, but for such an assumption, the context must afford a special ground, as in the instance of the following, "Fetch kukkutau [fowls]. Let me cause them to have sexual intercourse."(3) Here, however, there exists

(1). Mit. chap. ii. sec. i. para. 2.

(2). "Beeves" though a generic term, must, in this instance, necessarily exclude "Oxen," which has been distinctly mentioned.

(3). Kukkutau is a compound of two terms, both signifying birds of the same species; and in this instance it must be assumed to be a compound of two terms, one signifying a male and the other a female bird, as otherwise sexual intercourse between them would be impracticable.

no such special ground. On the contrary, the term "Gotrajah" being used in the text of Yájñavalkya, after the words "brothers likewise and their sons," both of which denote *males*, must be concluded to mean male Gotrajah only and not females.(1)

Reasons for construing that "Gotrajah" is a compound of two terms of the *masculine* gender.

3. Again, referring to the Çruti "Females and persons deficient in an organ of sense or member are deemed incompetent to inherit," (which Çruti, as already(2) noticed, is applicable to females not being a widow, daughter, or the like, whose right to inheritance has been expressly declared by law), it [the Çruti] will be found reconcilable with the conclusion that the complex term "Gotrajah" is a compound of two terms of the masculine gender. Whereas, if "Gotrajah" were considered to consist of two terms of different genders, namely, the masculine and feminine, such a construction would be opposed to the purport of the Çruti. The latter construction is therefore set aside.

Basheyakara's interpretation of the aphorism of A'pastamba, quoted in support of the construction.

4. Accordingly, Basheyakara, the commentator of the sutrah or aphorisms of A'pastamba, construes the sutrah : "The father, being alive, distributed his heritage among his sons [Putrabheyah]," as signifying that heritage was distributed among the sons alone and not among the daughters also, these being females.

5. Under the rule of Grammar(3) "Brothers [Bhratarau]

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(1). It is from such a construction of the term "Gotrajah" that sisters are altogether excluded from inheritance in the Presidency of Madras. A sister's son does not also inherit, Deed Kullama *vers.* Kuppu Pillai—I M.H.C.R. 85. But, according to the Bengal Law, a sister's son is in the line of heirs—Jim. Vah. chap. xi. sec. vi. paras. 8 and 9.

(2). See chap. xi. sec. i. para. 56, and chap. iv. para. 5 of this treatise.

(3). Panini, 1, 2—68; see I Morl. Dig. 325, 326. The meaning of this rule can thus be clearly stated. The Sanskrit word for "Brothers" is resolvable into two terms signifying brother and sister, and so also is the Sanskrit word for "Sons" resolvable into two terms, denoting son and daughter. The feminine words "sister and daughter" merge, according to Sanskrit Grammar, in the masculine terms "Brothers and Sons" respectively.

and sons [Putarau], with sisters and daughters," the terms "Duhita cha and Putrah cha" [daughter and son] form the complex term "Putrau" [sons], by the omission of one term and retention of the other of the regular compound of two species. Though, accordingly, by supposing that the complex word "Putra" [sons] in the phrase "Among his sons [Putrabheyah]" used in the aphorism above quoted, comprises two terms of two different genders, namely, daughter and son, it is practicable to construe the passage in question as implying that heritage was distributed among daughters also, yet such a construction is to be rejected as opposed to the principle that males alone are competent to inherit and not females, inculcated by the Çruti, "Females and persons deficient in an organ of sense or member are deemed incompetent to inherit."

How the term "Putrabheyah," used in the aphorism, is to be construed.

6. Some say :(1) "Gotrajah [Gentiles] are the *paternal grandmother* and relations connected by funeral oblations of food [Sapindas] and relations connected by libations of water [Samánodakas]. In the first place, the grandmother takes the inheritance. The paternal grandmother's succession, immediately after the mother, was seemingly suggested by the text 'And the mother also being dead, the father's mother shall take the heritage; ' no place however is found for her in the compact series of heirs from the father to the nephew. She must therefore, of course, succeed immediately after the nephew, and thus there is no contradiction." This is not right. Even after the nephew, there is no place to be found for the grandmother, the term "Gotrajah" *immediately* following the term nephew in the compact series of heirs, and that term referring, as above noticed, to male Gotrajah. Besides, Gotrajah (in Sanskrit) means persons sprung from the same

The opinion of some that that paternal grandmother is a Gotrajah, and that she succeeds after the nephew, rejected.

Reasons for the rejection.

(1). See Mit. chap. ii. sec. v. paras. 1 and 2.

family. But a grandmother is not one sprung from the same family with the deceased. She was born in a different family and had connection with the family of the deceased, only by marriage. She cannot hence be called a "Gotrajah." This much is sufficient to refute the opinion above quoted.

7. Yájñavalkya, it must be understood, has used in his text the term "Gotrajah" in the form of a conjunctive compound, as he has done the term "Pitarau" [parents] in the same passage. This is because, as between both the parents, he saw no ground(1) for given precedence to one over the other, so he found no reason among Gotrajahs for selecting one in preference to another. For instance, in declaring that, in default of a brother's son, the son of the grandfather succeeds, what reason could there be? None.

Yájnavalkya's object in using the term "Gotrajah" in the form of a conjunctive compound.

8. The objector here asks who has declared a grandfather's son entitled to inheritance in supersession of a grandfather? The reply is, that Yájñavalkya himself must be presumed to have so declared by his having used in his passage(2) the term "Gotrajah" [Gentiles] immediately after the phrase "brothers likewise and their sons." The separate mention of brothers and their sons while they are comprehended in the term "Gotrajah," is indicative of the rule that, of the descendants severally belonging to the grandfather and others, only two, namely, the son and the grandson, are entitled to inheritance, as is the case with the descendants of the father.

Objector's argument.

Reply.

The object of the separate mention of brothers and their sons, while they are comprehended in the term "Gotrajah," explained.

9. Menu, too, propounds the same principle:—"Whoever is the next in the line of kinsmen [Pinda], to him the inheritance

Passage of Menu.

(1). See chap. xi. sec. iii. para. 2 of this treatise.

(2). Mit. chap. ii. sec. i. para. 2.

belongs.(1) On failure of such kindred, the distant kinsman [Sakulya] shall be the heir of the spiritual preceptor or the pupil."

10. Daraiçvara explains the above passage, as follows:—

Daraiçvara's explanation of the passage.

"The term 'Pinda' [funeral oblations of food] used in the above "passage, must be taken to mean 'Sapinda'(2) [Kinsmen "connected by funeral oblations of food]. Who is the first "Sapinda [Kinsman] from whom the line of 'Sapindas' is "to be reckoned? The father alone, it being, in the first "place, declared 'the estate of one who leaves no male "issue, is inherited by the father, &c.' Where, after a "father, the father, and the sons of such a father are both "alive, who takes the inheritance next? I say, the sons "[and not the father] of the father, or in other words, the "brothers of the deceased. How is this? It is because, in "the text, 'the estate of one who leaves no male issue is "inherited by the father, or by the brother alone [Eva]'(3) "the particle 'Eva' [alone] indicates the exclusion(4) of the "grandfather from inheritance. It would hence appear that "although, on the demise of a father, his father and son, "[*i.e.* the grandfather and brother of the deceased], stand "both on an equal footing in point of propinquity and there "would thus be no reason, under the text of Menu above "cited, para. 9, for giving preference to one over the other; "yet, on the strength of the text of the same author, ending

(1). This hemistich is translated in Jim. Vah. as follows: "To the nearest kinsman, the inheritance next belongs." But this version does not seem to be in strict accordance with the Sanskrit text as quoted in the Smruti Chandrika.

(2). Sapinda is derived from Pinda, the funeral rice-ball or cake, and it is descriptive of those who participate in offering it to the deceased. These offer also oblations of water.

(3). See chap. xi. sec. i. para. 1 of this treatise.

(4). This is opposed to the Mitákshara, according to which a grandfather is in the line of heirs—Mit. chap. ii. sec. v. para. 3—and inherits *before* uncles and their sons. The exclusion, however, of a grandfather under the Smruti Chandrika does not seem to be a total exclusion. It is true that as a grandfather he is not in the line of heirs, but, as the son of the great-grandfather, he is in the line of heirs, and, as such, inherits *after* the uncles and their sons. Vide para. 12 of this section and the tabular sketch appended to this chapter.

"with the phrase 'by the brother *alone*' the order of suc-
"cession, with reference to nearness of kin, must take its
"course through the *descendants* only. Therefore, by the
"text 'whoever is the next in the line of kinsmen, &c.
"para. 9,' it must be understood that in default of the
"descendants [these being only two, *i.e.* the son and grand-
"son, as observed in the latter part of para. 8 of this sec-
"tion] of the father, the descendants of the grandfather
"succeed, and that in default of them, the descendants of
"the great-grandfather take the inheritance. A similar
"rule of succession must be observed as far as the highest
"degree of Sapindas. On failure of Sapindas, Sakulyas
"succeed; kindred connected by libations of water [Sama-
"nodakas](1) being also represented by the term "Sakulya"
"used in Menu's text, para. 9. Among them too, on failure
"of the descendants of the nearest, the descendants of the
"next in order take the inheritance."

Daraiçvara's explanation adhered to by the author of the Smruti Chandrika.

11. On the strength of the above explanation, it must be concluded that those who declare that, after the brother's son, the grandfather succeeds, that on failure of him, his descendants take, and that a similar rule is to be observed in the case of the great-grandfather and others, are ignorant of the true meaning of the text, para. 9, inculcating an order of succession(2) different from that ordained by the text founded on reasoning.(3)

(1). The term Samanodaka is derived from Oodaka "water." It is descriptive of a remoter grade of relatives [than Sapindas], who do not offer the rice-balls but the water only. On failure, however, of Sapindas, the Samanodakas make offering of the Pinda or rice-ball, as do the Bandhus, on failure of Sapindas and Samanodakas.

(2). It is certainly contrary to reasoning that a grandfather, great-grandfather and the other fore-fathers in the ascending line should be excluded from the right of succession *before* their descendants. The Smruti Chandrika, however, holds this doctrine on the strength of the exposition [as noticed in para. 10] given by Daraiçvara of the text of Menu, "Whoever is the next in the line of kinsmen, &c." in connection with the text of the same author, "The estate of one who leaves no male issue is inherited by the father or *by the brother alone.*"

(3). From that founded on reasoning]. This refers to the text of Yájnavalkya, "The wife and the daughters also, &c." in Mit. chap. ii. sec. i. para. 2, which text is usually called to be one founded on reasoning.

12. The order of succession then stands, as follows:—

Order of succession stated according to the Smruti Chandrika.

On failure of a brother's son(1) the son of the grandfather succeeds; on failure of him, his son; on failure of him, the son of the great-grandfather; on failure of him, his son; on failure of him, the son of the great-great-grandfather; on failure of him, his son; on failure of him, the son of the father of the great-great-grandfather; on failure of him, his son; on failure of him, the son of the last Sapinda; on failure of him, his son; on failure of him, the son of the first Samanodaka(2) [a kinsman allied by common libations of water]; on failure of him, his son. A similar rule is to be observed in regard to the succession of the descendants of each of the five Samanodakas of the higher grade.(3)

13. Brahaspati, bearing in mind all the above principles,

Brahaspati's passage on the subject.

declares "Where there are many relatives [Jnátayah], or remote kindred [Sakulyáh] or cognate kindred [Bándhuváh], whoever is nearest of kin, shall take the wealth of him, who dies without male issue.

Jnátayah] Sapinda, or kinsmen connected by funeral oblations of food. Sakulyah] Samanodakas, or distant kinsmen connected by libations of water. Bándhuváh](4) Cognate kindred. A description of these is given, as follows, in a different Smruti, according to their order of relationship.

14. "The sons of his own father's sister, the sons of his

Cognates described.

own mother's sister, and the sons of his maternal uncle must be considered

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(1). According to the Bengal law, brother's grandsons are also in the line of heirs—Jim. Vah. chap. xi. sec. vi. para. 6.

(2). The Sapindas extend to the sixth male in direct ascent from the person to be traced from; and the Samanodakas extend to the sixth above the male Sapindas.

(3). See Mit. chap. ii. sec. v. para. 5 and note as to the order of succession according to Mit. and different other authors.

(4). These cognate kindred lie beyond the Samanodakas. These, as such, make no offerings.

as his own cognate kindred. The sons of his father's paternal aunt, the sons of his father's maternal aunt and the sons of his father's maternal uncle, must be deemed his father's cognate kindred. The sons of his mother's paternal aunt, the sons of his mother's maternal aunt and the sons of his mother's maternal uncle, must be reckoned his mother's cognate kindred."(1)

In default of any of the heirs expressly mentioned above, one who may be somehow equal to him may be selected.

15. Of the kinsmen, distant kinsmen, and cognate kindred, in default of one that stands nearest in the order *expressly* given, he that may be somehow viewed to stand on a par with him may be selected; it being generally declared by Gautama:—"Let those take the inheritance who give the funeral cake [Pinda], who are the descendants from the same Gotra, or who are sprung from the same Rishi."

SUMMARY (BY THE TRANSLATOR).

I. If there be not even a brother's son, the order of succession is as follows.

Sapindas or Kinsmen.

I.—The son of the grandfather.
II.—His son.
III.—The son of the great-grandfather.
IV.—His son.
V.—The son of the great-great-grandfather.
VI.—His son
VII.—The son of the father of the great-great-grandfather.
VIII.—His son.
IX.—The son of the last Sapinda.
X.—His son.

(1). In the Mitakshara, chap. ii. sec. v. para. 1, this passage is rendered thus: "The sons of his own father's sister, the sons of his own mother's sister, *and the sons of his own aunt*, and the sons of *his mother's maternal uncle*, must be considered as his own cognate kindred. * * * The sons of his mother's paternal aunt, the sons of his mother's maternal uncle, must be

Samanodakas or Distant Kinsmen.

xi.—The son of the first Samanodaka.
xii.—His son.
xiii.—The son of the second Samanodaka.
xiv.—His son.
xv.—The son of the third Samanodaka.
xvi.—His son.
xvii.—The son of the fourth Samanodaka.
xviii.—His son.
xix.—The son of the fifth Samanodaka.
xx.—His son.
xxi.—The son of the sixth Samanodaka.
xxii.—His son.

Bandhus, or Cognate Kindred.

xxiii.—The son of the father's sister.
xxiv.—The son of the mother's sister.
xxv.—The son of the maternal uncle.
xxvi.—The son of the father's paternal aunt.
xxvii.—The son of the father's maternal aunt.
xxviii.—The son of the father's maternal uncle.
xxix.—The son of the mother's paternal aunt.
xxx.—The son of the mother's maternal aunt.
xxxi.—The son of the mother's maternal uncle.

II. The grandfather, great-grandfather, and the like, do not inherit before their respective descendants, as the order of succession takes its course, according to the Smruti Chandrika, through the descendants only.

III. In default of any of the kinsmen, distant kinsmen, and cognate kindred that are expressly mentioned above, one who may be considered somehow equal to him may be selected.

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reckoned his mother's cognate kindred." In the first sentence, "the sons of his own aunt" is a mere repetition, signifying nothing more or less than the two preceding phrases, and is further unsupported by the original text. "The sons of his mother's maternal uncle" which appears in the same sentence, is unwarranted by the original text. Besides, such sons cannot be called one's own cognate kindred; because, by what follows, this class of sons is clearly the mother's cognate kindred. In the second sentence, the phrase "the sons of his mother's maternal aunt" is omitted, whether, through inadvertence or error, though the same is borne out by the original text.

In Vy. May. chap. iv. sec. viii. para. 22, the above passage is translated correctly.

CHAPTER XI.

SECTION VI.

ON THE SUCCESSION OF STRANGERS UPON FAILURE OF THE KINDRED.

In default of Bandhus, a pupil and a fellow student succeed. Text of Yájnavalkya.

1. If it be asked who inherits in default of Bandhus, a Yajñavalky says "A pupil and a fellow-student."(1) Add to these words "take the inheritance."

Who is a pupil.

2. He is a pupil, on whom the deceased caused the ceremony of Upanayana(2) to be performed and to whom he taught the Vedas.

Who is a fellow-student.

3. He is a fellow-student who acquires his learning from the same preceptor (as the deceased).

Preceptor takes precedence before the pupil.

4. It is to be understood here that the preceptor himself was not specifically mentioned in the above text, as it was unnecessary, seeing that a preceptor is entitled to more regard than a pupil, and that since mention has been made of the pupil himself in the line of heirs, the preceptor, on the analogy of the loaf(3) and staff, takes of course precedence before the pupil and succeeds to the deceased's property in default of Bandhus.

(1). Mit. chap. ii. sec. i. para. 2.

(2). Upanayana is the investiture with the marks of the class, performed in the eighth year from the conception of a Brahmana: but it may be anticipated in the fifth or be delayed to the sixteenth year—Note of Mr. Colebrooke in his translation of the Digest on text 134, chap. iii. book 5.

(3). The analogy of the loaf and staff] To gnaw the staff was difficult for the rat; but, if that were accomplished, the eating of the loaf, which was attached to it, was easy. So in other cases, according to the circumstances of them, if one of associated things be true, the other may be rightly inferred —Vide also notes to chap. ix. sec. ii. para. 15, and chap. xi. sec. ii. para. 17.

In default of a fellow-student, the learned and virtuous Brahmins take the wealth, as Menu has provided.

5. If it be asked who succeeds in default of a fellow-student, Menu declares "On failure of all those, the lawful heirs are such Brahmins as have read the three Vedas, as are pure in body and mind, and as have subdued their passions. Thus virtue is not lost.(1) The property of a Brahmin shall never be taken by the king. This a fixed law."

In default of such a Brahmin any Brahmin takes the wealth, but not the king. Text of Nareda.

6. In default of a Brahmin possessing the qualifications above described, Nareda, referring to the king, says, "If there be no heir of a Brahmin's wealth, on his demise, it must be given to a Brahmana. Otherwise, the king is tainted with sin."(2)

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(1). See Menu, chap. ix. Sloka 188—Note.

(2). See *Collector of Masulipatam* versus *Cavaly Venkata Narrainappa*, 8, Moo. I. A. Cav. 500, 523, where the Lord Justice Knight Bruce referred to this and the two preceding clauses, and observed "From these it would appear that the beneficial enjoyment of a Brahmana's property ought not, on his death without heirs, to pass to the king; that it ought, in some way or another, to pass to other Brahmins. But the texts also show that it is not to pass to Brahmins generally, or even to any definite or well-ascertained class of them. The persons to take the beneficial interest are to be Brahmins having certain spiritual qualifications; they are to be pure in body and mind, and are to have read the three Vedas. If this be the law, it seems to imply a power of selection; and a right of possession, at least intermediate, of the property in some body. It cannot be supposed that the first Brahmin who could lay hands upon the property of a member of his caste dying without heirs was to hold it, subject perhaps to the condition of shewing that he possessed the personal qualifications which the law requires.

It appears to their Lordships that the passage quoted by the Mitákshara from Nareda, in the very section which cites the prohibition of Menu, shews what the law in its utmost strictness was. That passage is "If there be no heir of a Brahmin's wealth, on his demise, it must be given to a Brahmana. Otherwise, the king is tainted with sin." In other words, the king is to take the property, but to take it subject to the duty, which he cannot neglect without sin, of disposing of it at his discretion among Brahmins of the kind contemplated by the preceding texts.

If this be so, it appears to their Lordships that according to Hindu Law, the title of the king by escheat, to the property of a Brahmin dying without heirs, ought, as in any other case, to prevail against any claimant, who cannot show a better title; and that the only question that arises upon the

On his demise] On the demise of the owner of the property. As for the wealth of one (deceased) belonging to any other class than a Brahmin, Menu ordains, "But the wealth of the other classes, failure of all (heirs), the king may take." A king is he who rules a city or town.

In other cases the Sovereign takes the escheat, as is ordained by Menu.

7. Nareda, after having declared that, in default of all heirs, the estate goes to the king, says "Excepting the wealth of a Brahmana, but a king, attentive to his duty, shall allot a maintenance to the wives of the deceased. This is declared to be the rule of inheritance."

The king should allot maintenance to the deceased's wives incompetent to inherit.

To the wives of the deceased] To the wives of the deceased owner of the property, not being a Brahmin, and which wives are incompetent to inherit his property.

8. In the instance contemplated by the text, para. 5, "On failure of all those, &c." Sangrahakara points out certain distinctions with reference to the tribe to which the deceased in each case may belong. "On failure of the father, his father's descendants take the wealth. On failure of such descendants, the descendants of his grandfather. On failure of these descendants too, the descendants of his great-grandfather. In like order, the Sapindas, or kinsmen of the higher degrees, also take the inheritance. On failure of Sapindas, the Sakulyas, a priest,

According to Sangrahakara, the wealth of a Cudra goes to the king on failure of heirs as far as the uterine brother, and that of a Kshatriya, or Vaiçya, on failure of heirs as far as the preceptor.

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authorities is, whether Brahmanical property so taken, is, in the hands of the king, subject to a trust in favour of Brahmins. In this suit, where the issue is between the Government claiming the property (whether subject to a trust or not) by escheat, and a party claiming by an adverse title, it is unnecessary to decide whether the duty imposed upon the king is one of imperfect obligation, or a positive trust affecting the property in his hands, or whether, if a trust, it is or is not one incapable of enforcement by reason of the uncertainty of its objects. It is also unnecessary to decide on the arguments addressed to us concerning adistinction, orsupposed distinction between, the Brahmins who have been called "Sacerdotal Brahmins" and "the ordinary members of the caste." See too, 2 Str. H. L. 47-1, Morl. Digest, 311.

a pupil, a virtuous Brahmachári, a virtuous Brahmin. On failure of the first among these, the next in order takes. The wealth of a Çudra, on failure of (heirs as far as) the uterine brother, goes to the king. Accordingly, the wealth of a Kshatriya or Vaiçya, too, goes to the king in default of (heirs as far as) the preceptor."

Exception taken to a portion of the above passage of Sangrahakara.

9. Sangrahakara, being an adherent to Daraiçvara's opinion, says in the above passage that in default of the father, the estate goes to the descendants of his (father's) father.

But it must be understood as our opinion, that on failure of a father, the mother is the successor; on her failure, the grandmother; on her failure, the descendants of the father of the deceased, namely, the brothers and his sons.

To whom the rules of succession hitherto stated, are applicable.

10. All that has been hitherto stated[1] as to succession in default of male issue, refers *mutatis mutandis* to the property of a deceased belonging to one or the other of the following classes—

I.—Anupanita, or one on whom the ceremony of Upanayana was not performed.

II.—Upakurvánaka Brahmachári, or a temporary[2] student, who is to be married.

III.—Samávarta, or a Brahmachári (student), on whom the ceremony (called Samávartanam) on return from the preceptor's house, has been performed.

IV.—Grihasta, or a married man or house-keeper.

V.—One who is not included in any of the other orders, (namely, those of the Hermit and the Ascetic), and on whom the ceremony (Samávarta) on return from the preceptor's house, has been performed.[3]

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(1). Stated] Stated in this whole chapter.

(2). See note to chap. v. para. 7 as to an explanation of this term.

(3). These enumerations include, in fact, all but a Nystika Brahmachari (a perpetual student), Vanaprastha (a hermit), and Yati (an ascetic), to the succession of whose wealth, a different rule has been laid down in the next section.

SUMMARY (BY THE TRANSLATOR).

I. In default of Bandhus, the order of succession is, as follows:—

i.—The preceptor.

ii.—The pupil.

iii.—The fellow-student.

II. On failure of these, the wealth, if that of a Brahmin, goes to a virtuous Brahmin learned in the three Vedas; and, in default of him, to any Brahmin. It never goes to the king. But, in the case of the wealth of any other class than a Brahmin, the king takes it on failure of all the heirs above mentioned.

III. According to Sangrahakara, however, the wealth of a Çudra goes to the king on failure of heirs as far as the uterine brother, and that of a Kshatriya or Vaiçya, on failure of heirs as far as the preceptor.

IV. The king, taking the property of one deceased, should allot maintenance to his (deceased's) wives incompetent to inherit.

CHAPTER XI.

SECTION VII.

ON SUCCESSION TO THE PROPERTY OF A PERPETUAL STUDENT, A HERMIT, OR AN ASCETIC.

The heirs of persons devoted to religion are specified by Yájnavalkya.

1. With regard to the wealth of a Nystika Brahmachári (a perpetual student),(1) Vanaprastha (a hermit), and Yati (an ascetic), a different rule has been laid down. Yájñavalkya :—" The heirs of a hermit, of an ascetic, and of a student are, in order, the preceptor, the virtuous pupil, the spiritual brother,(2) and the associate(2) in holiness."

Exposition of the text.

2. The term student (Brahmáchari), from being mentioned in the above passage together with an ascetic, means a Nystika or perpetual student. A spiritual brother is one who has the same preceptor. An associate in holiness is one who has studied the same Çastra. " In order"(3) means, on failure of the first among these, the next in order."

SUMMARY (BY THE TRANSLATOR).

I. The successors to the wealth of a perpetual student, a hermit, and an ascetic, are (1) a preceptor, (2) a virtuous pupil, (3) a spiritual brother, and (4) an associate in holiness.

II. On failure of the first among these, the next in order succeeds.

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(1). See note to chap. v. para. 7 as to an explanation of this term.

(2). Mitákshara construes both these expressions as referring to one and the same person, chap. ii. sec. viii. para. 5; but the Smruti Chandrika treats these as referring to different persons.

(3). Mitákshara construes "in order" as meaning in the inverse order, vide chap. ii. sec. viii. para. 2.

CHAPTER XII.

ON A SECOND PARTITION OF PROPERTY AFTER THE RE-UNION OF CO-PARCENERS.

Re-union is between certain relations only: so Brahaspati.

1. Brahaspati:—"He, who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed re-united."

Exposition of the passage of Brahaspati.

The purport of the above text is, that a son or the like, who, having once divided the property with his father, brother, or paternal uncle, unites again with any of them through affection, &c. is termed one re-united. Hence, by implication, there can be no re-union with relations [such as a brother's son,(1) uncle's son, and the like] other than a father, brother, or a paternal uncle.(2)

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(1). Here an anomaly will be seen. A re-union with paternal uncle being allowed, the person that so re-unites with the paternal uncle must necessarily be a brother's son. How, under this circumstance, could it be said that there can be no re-union with a brother's son. I however think that though re-union may exist as a matter of fact between a brother's son and his paternal uncle, still the former cannot, *in law*, be contemplated to be a re-united co-parcener, he not acquiring the rights of inheritance appertaining to a re-united co-parcener, as is inferrible:

1stly.—From no mention being made of a re-united brother's son in paras. 23 and 24 of this chapter, under which preference is given, in default of a re-united brother, to a re-united father or paternal uncle only, over a parcener not re-united.

2ndly.—From a brother's son being declared in paras. 32 and 34 of this chapter to be entitled, at a partition between him and the widow of the deceased re-united parcener, to recover his father's share only and not that of the deceased, although his father had re-united with the deceased.

And, 3rdly.—From a brother's son, as one of the Sapindas, [vide para. 37 of this chapter] being declared entitled to inherit, only on failure of all heirs of the deceased down to a sister.

(2). Mit. and Jim. Vah. agree with the Smruti Chandrika in the opinion that a re-union cannot take place with any person indifferently, but only with a father, a brother, or a paternal uncle—Mit. chap. ii. sec. ix. para. 3, and Jim. Vah. chap. xii. para. 4. But Vyv. May. overrules this restriction—Vyv. May. chap. iv. sec. ix. para. 1.

2. A re-union is completed not by the union of the co-parceners alone, but by the union of their wealth. It must therefore be understood that the term "re-union" does not apply, until the effects which had been divided, are again mixed together as before, so as to destroy altogether every mark indicating division. A mere joint residence of co-parceners does not amount to a re-union.

When a re-union is completed.

3. Menu, therefore, lays down a distinction as regards a second partition to be made after re-union: "If brethren once divided and living again together as parceners, make a second partition, the shares must in that case be equal. There is not in this instance, any right of primogeniture [Jysteyam]. Living together] Residing together. Make a second partition]Make a second partition of the mixed wealth.

When partition is again made after re-union of parceners, the shares must be equal. Passage of Menu.

Certain terms in the passage, explained.

4. In the above passage, the words "The shares must in that case be equal," are in themselves sufficient to show the non-recognition of primogeniture. While so, inequality of division on the score of primogeniture, has again been expressly prohibited in the passage and the object of this is to show that, in the distribution, the shares may be even unequal where the wealth, at the time of re-union, had been made up of disproportionate contributions. Therefore, the inequality of shares must be proportionate to the extent of the contribution which each parcener had made at the time of re-union. The inference hence is, that the effect of re-union is to destroy simply the identity of property and not the extent of share of each of the parceners concerned in the re-union.

The shares, however, may be unequal with reference to the portion contributed by each, at the time of re-union.

5. Brahaspati propounds unequal partition on a different ground. "If any one of the re-united brethren acquire wealth by science, valour, or the like, two

A re-united parcener is entitled to a double share in his self-acquired property. Passage of Brahaspati.

shares of it must be given to him and the rest shall have each a share."

Of it] Of the wealth acquired as stated.

Exposition of the passage.

6. The above passage is intended to enjoin division of what was acquired, even where such acquisition had been made without detriment to the re-united property.(1)

When one of the re-united parceners dies before a second partition, his sons and the like get his share in right of representation.

7. If, before a second partition takes place among the re-united parceners, one of them die leaving sons and the like,(2) the second partition is to take place according to the principle contained in the text "Among those whose fathers are deceased, the allotment of shares is according to the fathers," there being no other law on the subject. Where, however, the deceased re-united parcener leaves no son and the like, the rule contained in the passage, "The wife and the daughters, &c.,"(3) does not apply; there being a different law on the subject.

When a second partition is made after re-union, there exists no right of primogeniture. The share of a parcener dying or entering a different order [without a male issue] is taken by his uterine brother. Passage of Brahaspati.

8. Accordingly, Brahaspati :—"Among brethren who being once separated, again live together through mutual affection, there is no right of primogeniture when partition is again made. Should any of them die or enter a different order,(4) his share shall not be lost; but shall be taken by the uterine brother."

Exposition of the passage.

9. If, before partition in a family *prior* to re-union, one should die or enter a religious order without leaving male issue, his share

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(1). This is an exception to the general rule contained in chap. vii. of this treatise that such self-acquired property is not partible and belongs exclusively to him who acquired it.

(2). And the like] This may be either a grandson or a great-grandson.

(3). Mit. on Inheritance, chap. ii. secs. i. and ii.

(4). It would appear from the following exposition of the passage that the re-united parcener here contemplated is one dying or entering a different order, *without leaving a son, grandson, or great-grandson.*

becomes extinct because no partition has taken place in the family, and there has been consequently no ascertainment of the extent of share of each parcener. Therefore all the other undivided parceners take the whole heritage of the deceased. But, in the instance of a parcener dying after re-union, no such ascertainment of the extent of his share is wanting; the extent having already been ascertained in the original partition. A re-union cannot have the effect of destroying the extent of share so ascertained. It simply destroys the *exclusive* right which he had possessed prior to the re-union to the property that had fallen to his share. Therefore, the whole estate is not, on his demise, taken by all the other re-united parceners. But at the time of the second partition, his share is set apart. This share does not however go to the widow, as in the case of the wealth of a *divided* husband; but it goes to the re-united *uterine* brother under the text, para. 8, of Brahaspati above quoted.(1) The term "uterine brother," though used in the text in the singular number, includes also the plural.

Passage of Nareda on the same subject.

10. Hence, Nareda:—"Among brothers, if any one die without issue or enter a religious order, let *the rest of the brothers* divide his wealth, except the wife's separate property."(2)

Passage of Yájnavalkya.

"The rest of the brothers" means the rest of the uterine brothers, it being declared by Yájñavalkya, "[The property of] a re-united [is taken by] the re-united [and that of] a uterine brother [by] the uterine brother." The meaning is, that the property of a re-united brother, the re-united brothers only take and not the widow and others; and that among them too, only the uterine brothers take.

Exposition of the passage.

(1). The order of succession in the case of re-united parceners is hence considered to be an exception to the general course of descent.

(2). Vide chap. xi, sec. i, para. 52, where this passage occurs.

11. If, in such a case, it be asked what is to become of the widow and unmarried daughters of the deceased re-united, Nareda says :—"Let them allow a maintenance to his women for life, provided these preserve unsullied the bed of their lord. But if they behave otherwise, the brethren may resume that allowance.(1) The maintenance of the daughter [if any] of such an one is enjoined to be made out of her father's share. She will take a share until she is initiated ; after that, her husband shall support her."(2) The meaning of the second of the above two Çlokas must be understood to be, that the initiation of the daughter of one that dies or enters a religious order, as well as the support of such a daughter till initiation, must be defrayed by the rest of the brethren alone.

The deceased's widow, if chaste, is entitled to maintenance at the hands of his brothers, who are also to support his daughter till her marriage and to get her married.

Passage of Nareda.

12. Where, among the rest of the brethren, there are certain uterine brothers re-united and certain uterine brothers not re-united, those uterine brothers that are re-united shall alone divide the property among them ; Nareda, reciting the text "Among brothers, if any one die without issue, &c." (para. 10), after having declared, "The wealth of a re-united goes to the re-united only."

Re-united uterine brothers will take the property before uterine brothers not re-united.

13. Where none of the uterine brothers are re-united and the half brothers are re-united, the uterine brothers alone take in that case the property though not

Uterine brothers, though not re-united, take before half brothers re-united. Text of Yájnavalkya.

(1). This is the first Cloka. This Cloka has also been cited in chap. xi. sec. i. para. 48.

(2). This is the second Cloka and occurs also in chap. xi. sec. ii. para. 18. By this Cloka, it would appear that a daughter does not *absolutely* inherit the wealth of a re-united father as any other heir. According to the Smruti Chandrika, a daughter is not in the line of heirs to the property of a re-united parcener.

See also note to para. 35 of this chapter.

re-united, and not the half brothers re-united; Yájñavalkya having declared: "[Uterine brothers] though not re-united, shall obtain the property, and not the son of a different mother."

The object of the particle "Api" used in the text, explained.

14. The particle "Api" [though] used in the above text, is indicative of the prohibition against the succession of half brothers though re-united.

Re-united half brothers take in default of uterine brothers. Text of Brahaspati.

15. Where, among the rest of the brethren, there are no uterine brothers at all, then the re-united half brothers take the wealth, under the text of Brahaspati, "Brothers who become re-united through affection share the wealth of each other." In this passage, the words 'half brothers' must be understood in order to avoid tautology.(1)

Another text of Yájnavalkya quoted and declared applicable to a case where there are uterine brothers.

16. The text of Yájñavalkya: "A half brother being again associated, shall not take the wealth of his half brother,"(2) is applicable to a case where there are uterine brothers. Hence, there is no inconsistency [between this and the text of Brahaspati above quoted].

A passage of Menu quoted by the objector as being opposed to the above declaration.

17. The objector here says: if it be declared that the re-united half brothers inherit solely on failure of uterine brothers even though not re-united, the declaration becomes opposed to the text of Menu. "Should the eldest or the youngest of several brothers be deprived of his allotment at the distribution or should any one of them die, his share shall not be lost; but his

(1). This is because the same author has stated in a passage (para. 8) already quoted, that "Should any one of the re-united parceners die or enter a different order his share shall not be lost; but shall be taken by the *uterine brother.*"

(2). This verse is read in some copies of the Smruti Chandrika, Nanyodaryo dhanam haret "a half brother shall not take the wealth" instead of Nanyodarya dhanam haret "shall not take the wealth of a half brother."

uterine brothers *and sisters and such brothers as are re-united after a separation* shall assemble together and divide his share equally."(1) The meaning of this text is, that such half brothers as are re-united, together with the uterine brothers and sisters of the same womb, shall assemble and divide equally the share that was not lost. The words 'together' and 'assemble' used in the text, render it clear that the joining together of the several heirs specified, is necessary to their dividing the wealth. Hence, the inconsistency of the declaration (2) above referred to with this text, is manifest.

The unfair construction by some authors of the above passage of Menu, noticed and rejected.

18. In order to reconcile the above inconsistency, some construe the above passage of Menu, as follows: "The share that was not so lost, if there be re-united uterine brothers, they alone take to the exclusion of uterine brothers not re-united; if none of the uterine brothers be re-united, then all the uterine brothers take. They do so, assembling together and without inequality in the share. In default of them, the half brothers take." But this construction is very unfair, requiring as it does, the supplying of several terms not warranted by the text. It is therefore to be rejected.

Others construe the text of Yájnavalkya so as to correspond with the text of Menu.

19. Others again, in order to avoid the inconsistency above noticed, recite the text of Yájñavalkya. "A half brother being again associated shall not take the wealth of his half brother (para. 16). Uterine brothers, though not re-united, shall obtain the property and not the son of a different mother (para. 13)"(3) and construe it so as to correspond *apparently* with the text of

(1). Vide chap. xi. sec. i. para. 51, where this passage occurs.

(2). This is the declaration that the re-united half brother inherits solely *on failure* of uterine brothers even though not re-united.

(3). This is an obscure text admitting of different interpretations and numerous variations in the reading. Vide Jim. Vah. chap. xi. sec. v. paras. 13 and 14 and note. See also Mit. chap. ii sec. ix. para. 7.

Menu. They take the whole first hemistich " Anyodaryasthu Samsristi Nanyodaryodhanam harét," and state the meaning of the words and the substance of the passage, as follows:—" A half brother [meaning one born of a rival wife] being a re-united parcener, takes the estate; but a half brother, who was not re-united, does not obtain the goods. Thus, by the direct provisions of the text [Anvya](1) and by the exception [Vyatireka], re-union is shewn to be a reason for a half brother's succession."(2) Then they take the phrase "Apicha adadyat Samsristi" in the second hemistich and connecting it with the word "Asamsristi" preceding it, state the meaning of the words and the substance of the passage, as follows:—" The term 'not re-united' is connected also with what follows, and hence, even one who was not again associated, may take the effects of a deceased re-united parcener. Who is he? The author replies 'one re-united,' that is, one united by the identity of the womb [in which he was conceived]; in other words, a uterine or whole brother. It is thus declared that relation by the whole blood is a reason for the succession of the brother, though not re-united in co-parcenery."(3) They then take the concluding part [Annia matrajah] of the second hemistich, and adding to it the particle " Eva," connect it with the word [Samsristi] in the middle of the second passage, and state the meaning as follows: " The term 'united' likewise is connected with what follows, and here it signifies re-united [as a co-parcener]. The words 'not the son of a different mother' must be interpreted by supplying the affirmative particle [Eva] understood. Though he be a re-united parcener, yet being issue of a different mother, he shall not exclusively take the estate of his associated co-heir."(4) They thus make the substance

(1). In logic, Anvya and Vyatireka; the first is the relation of events, of which whenever one occurs, the other also occurs; the second is the connexion of circumstances, of which when one occurs not, the other also does not occur.

(2). Mit. chap. ii. sec. ix. para. 8.

(3). Mit. chap. ii. sec. ix. para. 9.

(4). Mit. chap. ii. sec. ix. para. 10.

of the whole passage conform with that of Menu. They conclude by saying, "Thus by the occurrence of the word 'though' [api] in one sentence ['though not re-united, &c.'] and by the denial implied in the restrictive affirmation [Eva "exclusively"] understood in the other ['one united may take the property, and not exclusively the son of a different mother'] it is shewn that a whole brother not re-united and a half brother being re-united shall take and share the estate ; for, the reasons of both rights may subsist at the same instant."(1) An interpretation of this nature can only suit those who made it ; it cannot meet with the approbation of the learned, for, the wording of the passage is wholly incapable of bearing such an interpretation, which apparently is one tortured out by the interpreter with the force of his own invention.

Their construction rejected.

20. The inconsistency between the texts of Menu (para. 17) and Yájñavalkya (paras. 13—16) as apparent from the plain wording of both the texts, must here be reconciled by shewing the case to which each of the texts is applicable and not by trying to place forced constructions upon them, in order to make them consistent with each other. The text of Menu is applicable to a case where there is property immoveable together with property of other kinds.

Text of Menu applicable to a case where there is property both moveable and immoveable.

21. Prajapati, in such a case, propounds, by the following passage, the division of property between a re-united and un-reunited parcener, "Whatever concealed wealth is brought to light and whatever moveables there exist, become the property of the re-united parceners; but lands and houses, those not re-united shall take according to their shares."

Passage of Prajapati as to who take the moveables and who the immoveables.

22. The purport of the text is, that half brothers re-united shall take in due shares the concealed wealth and moveable property con-

Exposition of this passage.

(1). Mit. chap. ii. sec. ix. para. 11.

sisting of bipeds, of quadrupeds, &c. and that uterine brothers not re-united and also uterine sisters shall take the houses, lands, &c. in due shares. The conclusion hence is, that the text of Yájñavalkya (paras. 13—11) is applicable where there exists only one (1) species of property, or, in other words, where there exists either immoveable property *alone* or such property *alone* as is not immoveable.

Text of Yájnavalkya applicable where there exists only one species of property.

23. Where there are no half brothers re-united, then the father or paternal uncle, whoever was re-united, takes the estate; it being declared by Gautama "When a re-united parcener dies, his re-united co-heir shares his estate."

In default of half brothers re-united, the re-united father or paternal uncle takes the estate.

24. Where there is neither a father nor a paternal uncle re-united, the half brothers not re-united take; in default of them the father not re-united; in default of him, the mother; and in default of her, the widow (Patni).(2)

On failure of a re-united father or paternal uncle, a half brother or a father not re-united or a mother or widow succeeds.

25. Accordingly, Çankha:—"The property of one who departedf or heaven without male issue goes to the brothers: in default of them, both parents will take it, or the eldest wife (Patni)."(3)

Passage of Cankha.

26. The meaning is, where one re-united with his paternal uncle, father, or brother, dies without male issue, the wealth left by him goes to his half brother not re-united, in default of the co-parceners [above specified] re-united with him.

Exposition of the passage.

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(1). The author of Vyv. May. says that the proof of this opinion must be considered—Vyv. May. chap. iv. sec. ix. para. 15.

(2). As to the definition of the term Patni, see chap. xi. sec. i. para. 9 of this treatise.

(3). See note to Jim. Vah. chap. xi. sec. i. para. 15 as to the different readings of this passage.

27. Accordingly, Nareda: "The wealth of a re-united goes to the re-united only. No one else inherits. Where no issue is left, the others take."(1)

Passage of Nareda.

28. The meaning of the passage is, that while there exist re-united parceners, the half brothers and the like not re-united do not take the wealth. Where, however, all the parceners re-united become issueless, then succeed the half brothers not re-united.(2) What they so take is the share of the re-united parceners. Here too, the order prescribed by the passage of Çankha: "The property of one who departed for heaven without male issue, goes to the brothers, &c." (para. 25) is to be observed.

Exposition of the passage.

29. The words "eldest wife" used in the passage (para. 25) of Cankha, refer to a virtuous wife; it does not serve to exclude a junior wife if virtuous.

The words "eldest wife," used in the passage of Cankha, explained.

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(1). This text is translated, as follows, in II Digest, page 561: "The vested share of re-united brothers is declared to belong exclusively to them; in any other case than this, they shall not exclusively share the inheritance of the deceased; it shall go to other brothers, when no issue is left." As to the different readings of this passage and the various constructions put upon it, see II Digest, pages 561, 582 and 583.

(2). Where, however, all the parceners re-united become issueless, then succeed the half brothers not re-united.] This part is rather ambiguous. It might perhaps be construed that where, of two re-united brothers, one leaves an issue, such issue takes the wealth of his re-united uncle on his (uncle's) demise without issue. But such a construction, besides militating against the principle contained in the first paragraph of this section, wherein it is held that there can be no re-union with a brother's son, would be also found to be opposed to the passage of this very author [Nareda] cited in para. 32 of this chapter which, as construed in para. 34, holds a widow entitled to the share of a re-united parcener dying without issue, brother, or parents, and restricts the right of the brother's son to recover his own father's share only which had been mixed with the deceased's wealth on the occasion of re-union during the life-time of the deceased. I therefore think that the passage of Nareda in para. 27 should simply be construed thus: Where there exist re-united parceners, the half brothers and the like not re-united do not take the wealth. Where however *all* the parceners re-united *die* without leaving issue to succeed to their respective shares, the half brothers not re-united then take the wealth.

30. The particle "Va" [or] has been used in the passage in lieu of the phrase "On failure of." It indicates an alternative; but, inasmuch as there could be no alternative with reference to any such thing as "Svamiem" [ownership], it not being capable of existing indeterminately in one or other of the heirs at one and the same time, on the principle that a thing cannot have an indeterminate existence, therefore the alternative indicated by the particle "Va" has reference only to the default of the preferable heir.

The use of the particle "Va" occurring in the passage, shewn.

31. The order of succession accordingly stands thus. In default of the brother, the father inherits; in default of him, the mother; and in default of her, the widow. To avoid the supposition that this order of succession is opposed to that prescribed in the case of the wealth of a divided member dying sonless, by the passage, "The wife and the daughters, &c.,"(1) the author says that the order of succession is applicable to the wealth of a *re-united* parcener dying sonless. The order of succession prescribed by the above text, "The wife and the daughters, &c."(2) in the case of the wealth of a divided member is founded on reasoning; and yet that being superseded in the present instance, by the order of succession expressly declared by Çankha (para. 25), the passage of the latter must alone be here relied on; there being no reason to be stated in support of the same.

Order of succession, stated.

The order declared by Cankha prevails in the case of the wealth of a re-united parcener dying sonless.

32. If, in observing the above order, there exist a widow and also Sapindas, such as a brother's son and the like, Nareda:—"On the demise of their husband, the widows, in the absence of the brother, father, or mother [Abratru-pitru-matrukah] of their husband, and

Text of Nareda prescribing the course to be pursued where there exist a widow, and also Sapindas of the deceased re-united co-parcener.

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(1). Mit. on Inheritance, chap. ii. sec. i. para. 2.

(2). Mit. on Inheritance, chap. ii. sec. i. para. 2.

all the Sapindas shall divide their respective wealth in due shares."

33. In using the word "Abratru-pitru-matrukah," which is a compound term called "Dvandva(1) Samasa," Nareda, contrary to the rule "Of two or more persons or things, that which is the most respectable should be put first," has placed "Bratru" [brother] before "pitru matru" [father and mother] who are superiors to a brother. The object, however, of Nareda, in doing so, is to show that the wealth of a re-united parcener dying without male issue, goes first to the brother; in default of him, to the father; in default of him, to the mother; and in default of her, to the widow [Patni] that observes all kinds of religious duties. The conclusion hence is, that widows do not inherit in default of secondary sons alone, as is the rule in the case of the wealth of a *divided* member; but only in default of a half brother not re-united, and of a father and mother also.

Object of the compound term "Abratru-pitru-matrukah" used in the passage of Nareda, explained.

34. The phrase "All the Sapindas, &c." used in the above text (para. 32) of Nareda, comprehends Sapindas [not being a brother, father, or mother] of the deceased sonless re-united co-parcener, such as brother's sons and the like. These Sapindas and the widow are to take out of the re-united common property, the latter [widow] the share of her deceased husband, and the former [the brother's sons and the like], their respective father's share which had been mixed with the deceased's wealth on the occasion of re-union during the life-time of the deceased.

The whole passage expounded.

35. In default of the widow, the sister takes the inheritance of the sonless re-united. Accordingly, Brahaspati:—

(1). According to Sanskrit Grammar, when two or more words come together each in the same case and which, in the usual mode of construction, would be separated by a conjunction equivalent to "and," they may be formed into a compound called "Dvandva"—Wilkin's Sanskrit Grammar, page 569.

"His sister(1) is then entitled to take the inheritance. This law concerns one who leaves no issue, nor wife, nor father. Whether married or unmarried, the sister succeeds on the death of a uterine brother, identity of womb being alone the reason of succession in the case of sisters of both the above descriptions."

Sister inherits on failure of a widow. Text of Brahaspati.

36. The particle "Cha" [also] used in the above text, shews that the rule contained in the text is applicable to the wealth of one who [besides leaving no son, widow, or father] leaves also no brother or mother.

The particle "Cha" used in the text, explained.

37. In default of the sister, the Sapindas take the property of the deceased re-united, according to the order prescribed by the text, "Whoever is the next in the line of kinsmen, to him the inheritance belongs," the purport of which text has already(2) been given. There is no separate law on the subject in the case of the wealth of a re-united parcener.

On failure of a sister, the Sapindas take.

38. Accordingly, the same author [Brahaspati]: "Where one dies without issue, widow, brother, father, or mother,(3) all the Sapindas divide his wealth in due shares."

Passage of Brahaspati on the subject.

His wealth] The wealth of the re-united parcener. "Where one dies without issue," means where one dies even without a half brother and the like, who are declared, by the passage afore-mentioned, competent to inherit the property of a re-united co-parcener. Such is the meaning of the first hemistich of the above text of Brahaspati.

Exposition of the passage.

(1). Vyv. May. says that some read "his daughter" and that, in default therefore both of daughter and sister, the nearest Sapinda succeeds—Vyv. May. chap. iv. sec. ix. para. 25.

(2). See chap. xi. sec. v. paras. 9 and 10 of this treatise.

(3). This is the first hemistich.

After Sapindas, Samanodakas take.

39. In default of the Sapindas,[1] the wealth of a deceased parcener re-united, goes to the Samanodakas and others, just in the same manner as has been prescribed in the case of the wealth of a divided parcener. There is no separate law as to who is to succeed to the property of a re-united parcener, *after* the Sapindas.

(SUMMARY BY THE TRANSLATOR).

I. A re-union can take place only with a father, brother, or paternal uncle, and with no other relation.

II. Not only the union of the parceners as to residence, but also the union of their wealth, which had been previously divided, is necessary to complete a re-union.

III. The effect of re-union is simply to annihilate the exclusive and independent right, which each parcener previously had to his own share of the property. It affects in no way the extent of share of each of the parceners as ascertained previous to the re-union.

IV. Hence, when a partition is made after re-union, the share of each parcener will be proportionate to the extent of contribution he had made at the time of re-union, though thereby the distributions may be unequal.

V. In dividing the estate after re-union, there exists no right of primogeniture.

VI. Property self-acquired is also liable to division at the time of partition after re-union, although it may have been acquired without detriment to the re-united common property. The acquirer, however, will be entitled to a double share in such property.

VII. The allotment of shares to the sons of deceased re-united parceners will be made according to their respective fathers.

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(1). For an explanation of the terms Sapindas and Samanodakas, see chap. xi, sec. v, of this treatise.

VIII. The following is the order of succession to the property of a deceased re-united parcener. First, the son inherits; on failure of him, the son's son; in default of him, the son's grandson. However, a grandson whose father is dead, and a great-grandson whose father and grandfather are deceased, inherit at once with the son. On failure of descendants down to the son's grandson, the associated whole brother succeeds, and, on failure of him, the unassociated whole brother. In case there are no brothers of the whole blood, the associated half brother succeeds. But if there be an associated half brother and also an unassociated whole brother, and the property of the deceased consist of both moveables and immoveables, the unassociated whole brother, together with the uterine sister of the deceased, take, in due shares, the whole immoveable property, while the moveables are taken exclusively by the associated half brother. Where, however, the estate of the deceased consists *solely* of either moveable or immoveable property, the above rule does not apply, and in such a case the unassociated whole brother takes the property to the exclusion of the associated half brother. Where there are neither whole brothers (whether associated or unassociated) nor half brothers associated, the father or paternal uncle, whoever was associated with the deceased, takes his estate. On failure of such a father or paternal uncle, the half brother unassociated takes, and in default of him, the father unassociated. Where there is not even the father, the mother inherits, and in default of her, the virtuous widow of the rank of a Patni succeeds. On failure of the widow of the nature above described, the sister, whether married or unmarried, inherits. In default of the sister, the Sapindas, and on failure of them, the Samanodakas take the wealth according to the order prescribed in Chapter XI, in the case of the wealth of a *divided* parcener.

IX. Where brothers take the property of a deceased re-united parcener, they are to allow maintenance to his

widow so long as she is chaste, and also support his daughters until marriage, and get them married.

X. Where a deceased re-united parcener leaves a widow and also a Sapinda, such as a brother's son or the like, they are to divide the re-united common property between them, the widow taking the share of her deceased husband, and the brother's son his father's share which had been mixed with the deceased's wealth on the occasion of re-union during life-time of the deceased.

CHAPTER XIII.

ON THE RIGHTS OF SONS BORN AFTER A PARTITION AND ON THE ALLOTMENT OF A SHARE TO A CO-PARCENER RETURNING FROM ABROAD.

Sons already divided with the father should give a share to the son born after the partition. Text of Vishnu.

1. Vishnu, referring to a son born after partition, says:—"Sons with whom the father has made a partition, should give a share to the son born after the distribution."(1)

The text of Vishnu applicable to a case where the pregnancy of the father's wife was not manifest at the time of partition.

2. The meaning is: If the sons divided the family property with their father while the latter's wife was pregnant, but not known to be so, they shall give to the son who is afterwards born of that pregnancy, his share out of the shares which they had previously taken from ignorance of his existence. The father, for his own part, need give nothing to such a son out of his own share, but he is to take charge of the share which his other sons give, as above stated, on account of the son born after the partition, and live with him; it being necessary that he should protect him during his minority. Hence, it has been ordained by the text above quoted that a share to the son born after partition should be given by the sons alone with whom the father had already made the partition, and not by the father also.

Passage of Gautama directing a son born after partition to take the wealth of his father alone.

3. Gautama says, "A son begotten after partition [takes] the wealth of his father only." 'Takes' must be understood in the above passage.

(1). This is the text relied on by Jim. Vah., according to whom, a son born after partition between a father and his sons is to have his portion allotted to him out of his brother's shares [Jim. Vah. chap. vii. paras. 10—11]. Mitàkshara, however, provides in all cases that the portion be taken from the father's share—Mit. chap. i. sec. vi. para. 2.

The passage applicable to a case where the father dies before the sons already divided give a share to the son born after partition.

4. This passage, however, is applicable to a case where a father dies before the sons with whom he had made a partition give a share to the son born after the partition.

The object of the particle "Eva" used in the passage, explained.

The particle "Eva" [only] has been used in the passage, in order to show that the father's wealth alone is to be taken by the son born after the partition, and that the sons previously born need not give him any share in such a case.

Passage of Brahaspati, quoted.

6. Brahaspati says:—"The younger brothers of those who have made a partition with their father, whether children of the same mother or of different wives, shall take their father's share."

"Their father's share," means their father's share *only*.

The passage refers to the case of a son conceived and born after partition.

7. This passage is applicable to the case of sons, of whom the conception and birth were both *subsequent* to the division of the estate. The reason why such sons should take their father's share only, has also been stated by the same author. "A son born before partition has no claim on the paternal(1) wealth, nor one begotten after it on that of his brother." Has no claim on the paternal wealth] Has no right to the paternal wealth.

Reason why such son should take his father's share alone, explained by the same author.

Exposition of the passage.

8. The reason why a son born before partition has no claim on the paternal wealth, is because he has divided off with his father; and the reason why a son begotten after the partition has no claim on the wealth of his brother, is because such a brother possesses no property in which the son born after the partition can have an interest. Thus, it must be understood.

(1). This is read in Mit. chap. i. sec. vi. para. 4, Pitroh "of both parents," instead of Pitrye "paternal."

9. Brahaspati, on the strength of the principle that a son born before partition has no claim on the paternal wealth, which is the first of the two principles contained in his own passage above quoted, says something more on the subject. "All the wealth which is acquired by the father himself who has made a partition with his sons goes to the son begotten by him of the partition. Those born before it are declared to have no right to the property."

Wealth acquired by the father subsequent to partition goes to the son born after such partition.

10. The term "all" has been used in the text, in order to preclude the supposition that in the wealth acquired by the father subsequent to partition, the sons born before the partition have a claim to share, no share having previously been obtained by them in it.

The object of the term "all" used in the passage, explained.

11. The conclusion hence is, that the sons born before partition and the sons born after it have no claim whatever on each other's wealth, and in this respect they are viewed as if they were not related at all to each other.

The sons born before partition and the sons born after it have no claim on each other's wealth.

12. The same author, however, points out, by the following passage, that there is a slight distinction in this respect. "As in the wealth, so in the debts likewise, and in gifts, pledges, and purchases, they have no claims on each other, except for acts of mourning and libations of water."

They have however claims on each other for acts of mourning and libations of water. Passage of Brahaspati.

13. The meaning is, that they have claims on each other in respect of acts of mourning and libations of water, but not in respect of wealth, &c.

Exposition of the passage

14. The want of claim on each other in respect of debts, &c. occurs only where there is no re-union. But where there is a re-union, the same author adds :—"Brothers who become re-united through affection share the wealth of each other."(1)

Passage of Brahaspati, cited in para. 12, applicable to a case where there is no re-union. But where there is a re-union, re-united brothers share mutually.

(1). See chap. xii. para. 15 of this treatise.

Passage of Menu.

15. Menu ordains:—"A son born after division shall alone take the paternal wealth, or he shall participate [in that wealth] with such of the brethren as are re-united with the father."

Or he shall participate] Here add the words "in parental wealth."

To what case is the passage applicable.

16. This text is not hence inconsistent with the one already cited. It is applicable to a case where the father has died while living with the son born after the partition.

Passage of Yájnavalkya.

17. Yájñavalkya, referring to a son born subsequently to partition *after the demise of the father*, says: "When the sons have been separated, one who is afterwards born of a woman equal in class, shares the distribution,(1) or his allotment may be made out of the visible estate corrected for income and expenditure." (2)

Exposition of the passage.

18. If, after a partition had taken place among brothers on the demise of their father, while the pregnancy of their father's widow was not manifest, a son be born, he is entitled to a share. He gets a share out of the whole property already divided, or according to the second hemistich of the above Çloka, he gets a share out of the visible estate [such as household utensils, beasts of burthen, milch cattle, ornaments, workmen, and the like] corrected for income and expenditure, that is, after allowing correction for both income and expenditure.

The object of the term "visible" used in the passage, explained.

19. The adjective "visible" was placed before the term "estate" in the second hemistich of the above passage, in order to exclude the son born after partition

(1). This is the first hemistich of the Cloka.

(2). This is the second hemistich of the Cloka.

from participation of the concealed wealth which had been already divided.

Reasons for the doctrine contained in the passage of Yajnavalkya.

20. Although the son born after partition is in no way inferior to the other sons, yet Yájñavalkya has ordained in his case the alternative prescribed by the second hemistich, thinking that, as the existence of such a son was not ascertainable at the time of the original partition, a reduction in his share is not unreasonable. As, however, the existence of such a son was unascertainable, not owing to any fault on the part of the son, it must be understood that the giving him a share in the whole distribution, as stated in the first hemistich of the Çloka, is also considered not to be altogether unreasonable.

What share to be given to one absenting himself from his own fault and returning after partition. Passage of Brahaspati.

21. If, in the case of parceners returning from abroad after partition, one, from his own fault, had absented himself and should return after the distribution of the estate, he is to receive only a reduced share. There does not exist in his case the alternative of giving a full share in the estate. Accordingly, Brahaspati: "If a man leave the common family and reside in another country, he will get, when he returns, only half a share. There is no doubt in this."

Exposition of the passage.

22. Where one, leaving the common family, *i. e.* quitting the place where all his relations reside, goes away to a very remote region, and the rest of the parceners *from ignorance of*(1) *his existence*, make a partition among themselves of the whole estate, if he should subsequently arrive, only half a share is to be given to him out of the estate already divided. Here, as the division was made *from ignorance of the existence of the absentee*, and the absence was attributable to his fault, the alternative of giving him a full share in the estate has not been prescribed in his case. Hence, it has been asserted

(1). This must mean, I think, from ignorance of the place of his residence.

at the conclusion of the passage that "there is no doubt in this."

What share to be given to one returning after long absence. Passage of Brahaspati.

23. Likewise, where one, after *long* absence, arrives, if partition had already been made from ignorance of his existence, the same author states, "Be it debt or a writing, or house or field, which descended from his paternal grandfather, he shall take his due share of it, when he comes, even though he have been long absent."

Certain terms in the passage, explained.

Due share] Half a share.

When he comes] When he comes after the partition.

What share the heir of an absent co-parcener is to receive. Passage of Brahaspati.

24. If a grandson [of the absentee] and the like return after partition, the same author states that they are to receive a share only in property hereditary. "Be the descendant third, fifth or even seventh in degree, he shall receive his hereditary allotment on proof of his birth and name."(1)

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(1). The following note is to be found in reference to this passage in Jim. Vah. chap. viii. para. 2.

Or even seventh] The particle "Or" [va] connects this with other degrees not mentioned, but included with the seventh. Therefore descendants as far as the seventh in degree, returning from a foreign country, participate; not so the eighth or other remoter descendant. Accordingly, the text which expresses that, "The right to participation ceases with the seventh person" relates to this subject—Crikrishna.

Be he the third, or fifth, or even seventh] The particle "Or" is here employed in an indefinite sense. If therefore, at the time of the demise of the ancestor and owner, a descendant, within the degree of great-grandson, be the eldest of the male issue living, then, since the property devolves in regular succession on the progeny, the descendant even beyond the seventh degree may have a good title. But if the eldest of the [surviving] male issue be the son of the great-grandson, then since he is destitute of title, being debarred from offering a funeral oblation, his son, though fifth in descent, has not the right of succession—Achyuta.

The foregoing is cited, without mention of the author's name, by Crikrishna, who replies "That is not right: for, were it so, there would be no difference in the case of one who remained at home and of one who went abroad; and

25. To a certain class of absentees that return after partition, the same author states that a share is to be given in landed property alone though there may be other hereditary wealth. "To the lineal descendants when they appear, of that man, whom the neighbours and old inhabitants know by tradition to be the proprietor, the land must be surrendered by his kinsmen."

To a certain class of absentees, a share in the landed property alone is to be given.

When they appear] When they appear after the partition had taken place.

26. When a parcener returns, whether before or after partition, and insists on getting his share, the same author states that he will be entitled to receive the share only when he establishes, by proof divine or human, his title to the property that is in others' possession. "Whether partition have or have not been made; whenever a co-heir appears, he shall receive a share of whatever he proves to be the common property." (1)

Proof to be given by a parcener returning from abroad and claiming a share.

(SUMMARY BY THE TRANSLATOR).

I. If sons divided the family property with their father while the latter's wife was pregnant, but not known to be so, they shall give to the son who is afterwards born of that pregnancy, his share out of the shares which they had previously taken from ignorance of his existence.

II. Where, however, the father dies before the sons give

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that the text would consequently be superfluous. Accordingly, a separate revelation must be presumed as the ground of that text. This should be considered by the wise."

The close of Crikrishna's reply bears allusion to the sequel of Achyuta's argument, in which it is said, 'As for the supposition that the rights of third, fifth, &c.' are determined according to the greater or less distance of the place; but, since the succession is ordained to extend as far as the seventh in degree, it extends no further; and accordingly another passage of law expresses that inheritance stops beyond the seventh in descent. That is wrong, for, it would be necessary to assume another foundation of it (in Scripture), and the rule would be irrelevant, since no determination could be formed, as there is no ground for selection of particular distances.

(1). This very passage has been cited by the Smruti Chandrika in chap. vii. para. 37, where he attributes it to Vyasa, and explains the meaning thereof in a different manner.

a share, as above stated, to the son born after partition, the latter (*i.e.* the son born after partition) is to take his father's wealth only. The sons previously born are not, in such a case, to give him any share.

III. A son *conceived and born* subsequent to partition has no claim on the wealth of his elder brothers previously divided with his father. He shall take his father's share only.

IV. Wealth acquired by the father after partition with his sons, goes to the son begotten by him after the partition.

V. The sons born before partition and those born after it have no claims on each other except in respect of acts of mourning and libations of water.

VI. Where, however, there is a re-union between them, they share the wealth of each other.

VII. Where brothers divide the estate *on the demise of their father*, while the pregnancy of the father's widow was not manifest, and a son is afterwards born of that pregnancy, such son is entitled to a share either out of the whole property already divided, or out of so much portion of it as is visible, after allowing for both income and expenditure.

VIII. Where a parcener, *from his own fault*, had absented himself at a *very remote* country, and returns after partition of the family estate by the other parceners, he is to receive only half a share out of the estate already divided.

IX. A similar share is to be given also to one returning *after long absence*, subsequent to partition.

X. If the heir of an absentee, such as a grandson or the like, return after partition, he will be entitled to receive a share only in property hereditary.

XI. Where the lineal descendants of an absentee whom the neighbours and old inhabitants know by tradition to be the proprietor, appear, his kinsmen are to surrender to them his share of the landed property only, though there may be other hereditary wealth.

XII. An absentee appearing shall, subject of course to the rules above shewn, receive a share of such wealth only as he proves, by tests divine or human, to be *common property*.

CHAPTER XIV.

ON THE DISTRIBUTION OF EFFECTS CONCEALED.

Effects discovered after partition are subject to equal distribution. Passage of Menu.

1. Menu:—"When all the debts and wealth have been justly distributed according to law, anything which may be afterwards discovered shall be subject to an equal distribution."

Exposition of the passage.

2. If, of all property visible, whether debts or effects, a partition had been made according to the rules prescribed by the text, "All sons shall share equally the wealth of the father, but of those, he who is endowed with science and good qualities, is entitled to receive a greater portion,"(1) and if, at any subsequent period, it should appear, on the return of any absent person, that any debt is due by the parceners to such person, or that such person has, as a trustee or the like, possession of any wealth belonging to the parceners, such debt or wealth is then to be divided in equal shares, and no greater portion is to be allowed in it to any parcener on the score of his being endowed with science or good qualities.

Inference to be drawn from the passage of Menu, cited in para. 1.

3. Since the text of Menu, above quoted, declares debts discovered *after* partition divisible in equal shares, it is inferrible that in debts discovered *before* partition, unequal shares are allowable as in the case of wealth, [a superior share of such debt being allowed to learned co-parceners under the text above quoted].

If effects have been concealed and be discovered, they are to be divided equally. Passage of Kátyáyana.

4. If, at the time of partition, any one from fraudulent motives had concealed any portion of the family property, making it appear that it belonged to a different party, and if, on subsequent enquiry,

(1). See chap. iii. para. 1 of this treatise.

it is known that the property belongs to the family, it is to be divided in equal shares. Accordingly, Kátyáyana: "What has been concealed by one(1) and is afterwards discovered, let the sons, if the father be deceased, divide equally with their brethren."

Exposition of the passage.

5. The meaning is, that where there is no father, the sons alone are to divide among them the property discovered, as stated.

Effects withheld by one co-heir from another are likewise to be equally distributed.

6. Where, among co-parceners residing together, one appropriates to himself any portion of the effects belonging to the family, and the same is somehow discovered subsequent to the partition, it is to be divided equally among the parceners. Accordingly, Yájñavalkya:—"Effects which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule."

Let them again divide] Let all the divided parceners again divide.

Property ill-distributed, also to be divided anew.

7. As property withheld, so is property ill-distributed also subject to equal distribution. Accordingly, Kátyáyana:—"Effects which are withheld by them from each other, and property which has been ill-distributed, being subsequently discovered, let them divide in equal shares. So Bhrugu has ordained."

Property which has been ill-distributed] Property of which a distribution has been made in unequal portions contrary to law.

Property recovered after being seized or lost is to be divided equally.

8. Property recovered after being seized or lost is to be divided equally(2) just in the same manner as property withheld by parceners from each other and

(1). This is translated in Jim. Vah. ch. xiii. para. 4 as "one *of the co-heirs*" but the Sanskrit text, as cited in the Smruti Chandrika, does not justify this translation. A case of concealment by one *of the co-heirs* residing together has been dealt with in the passage of Yájnavalkya, following this passage.

(2). This rule, of course, must be held to be subject to the restrictions contained in ch. vii. paras. 32 to 38 and ch. viii. paras. 27 and 28 of this treatise.

property ill-distributed. Where, however, a divided parcener acquires property *subsequent* to partition, it belongs to him exclusively. The other parceners have no interest whatever in it. Accordingly, the same author (Kátyáyana):—"That wealth which has been acquired by a man after separation belongs to him exclusively. But what has been recovered after being seized or lost, as well as property of the descriptions aforementioned, shall be afterwards divided."

Property acquired subsequent to partition belongs to the acquirer exclusively.

Property aforementioned] Property withheld by parceners from each other and property ill-distributed. These have been noticed here for the sake of example.

Certain phrases in the passage, explained.

Shall be afterwards divided] Shall be divided in the manner before stated.

9. Hence, it must be understood that the author has declared that the partition of property recovered after being seized or lost is to be in equal shares only.

Partition of property recovered, &c. to be in equal shares only.

10. Menu and others having, by the above passages, propounded partition of such property only as is discovered after partition, it is to be understood that the division already made is not thereby to be disturbed, but that it is nevertheless to be considered as properly effected. Therefore, although, after a partition, certain properties belonging in common to the family are discovered, yet the parties are to be viewed as divided in virtue of the partition already made.(1)

Partition once made is not affected by subsequent discovery of common property.

11. There is however a text of Menu, as follows:—"When

(1). The Madras Hight Court, in their Judgment in R. A. No. 74 of 1864 [M.H.C.R. vol. ii. page 325], have ruled that the members of a Hindu family must be considered divided as to a portion of their property, while the status of non-division with all the incidents of joint tenancy attaches to that portion, which, for any reason of convenience or otherwise, they have chosen to leave undivided.

any common property whatever is brought to light after partition has been effected, that is not considered a [fair] partition, it must even be made over again."

A passage of Menu holding a contrary doctrine, quoted.

12. But this text must be considered as applicable to a case where common property is discovered before the divided parceners have proceeded to improve or expend the property already divided. Otherwise, the text becomes opposed to all the other texts above quoted.

To what case the passage of Menu is applicable.

13. The object of the law in allowing a re-distribution of the *whole* property, instead of dividing the subsequently discovered property alone, keeping the former distribution undisturbed, is that deductions, &c. [of the nature referred to in Chapter III] may be made in that case out of the subsequently discovered property also.

The object of the passage of Menu in allowing a re-distribution of the whole property, explained.

SUMMARY (BY THE TRANSLATOR).

I. Effects and debts discovered after partition are subject to equal distribution.

II. Effects concealed by any or withheld by one co-heir from another at the time of partition as also effects recovered after being seized or lost, are to be likewise equally distributed, when discovered or recovered.

III. Property ill-distributed is to be divided anew.

IV. Partition once made is not affected by the subsequent discovery of any property belonging in common to the family.

V. Where, however, common property is discovered before the divided parceners have proceeded to improve or expend the property already divided, the partition must be again made.

VI. Property acquired subsequent to partition belongs to the acquirer exclusively.

CHAPTER XV.

ON THE EFFECT OF PARTITION.

Divided parceners are masters of their respective wealth. Passage of Nareda.

1. Nareda :—" When there are many persons sprung from one man, who have their [religious] duties [dharma] apart, and transactions [Krya] apart, and are separate in the materials of work [karma gunah], if they be not accordant in affairs, should they give or sell their own shares, they do all that as they please; for, they are masters of their own wealth."(1)

Explanation of certain terms in the passage.

When there are many persons sprung from one man] When there are several persons descending from one man and divided in several ways.

Who have their religious duties apart] Who perform religious rites, such as Agnihotra, &c. requiring pecuniary aid for their performance, independently of each other.

And transactions apart] Who manage likewise the transactions concerning the income and expenditure of the divided wealth, as also the agricultural affairs, separately.

And are separate in the materials of work] Who likewise possess separate household utensils and other materials.

Divided parceners are competent to alienate at pleasure their respective shares.

2. Should one of these not consent to the act of the other, yet the latter is to disregard the consent and manage his own affairs. They are also at liberty to give, sell, or mortgage their respective shares at pleasure, since each is lord of his own wealth, once divided.

(1). In Jim. Vah. this text is apparently understood as relating equally to divid d and undivided shares; see Jim. Vah. chap. ii. para. 31, and note.

Text of Brahaspati against the independent power of a co-heir [though divided] over immoveable property.

3. Brahaspati, however, states:—"Separated heirs,[1] as those who are unseparated, are equal in respect of immoveables, for, one has not power over the whole to give, mortgage, or sell it." But this text is applicable to a case where, from difficulty of dividing the land itself in equal portions, the co-heirs enter into an agreement as to the division of its produce in times of harvest and divide actually the other property than the land belonging in common to the family. In such a case, it is clear that none of the parceners possess an exclusive and independent title to the land.[2]

To what case the text is applicable.

A distribution once made is not to be subsequently disputed.

4. The same author further states:—"Whatever share a man enjoys is not capable of being changed from him" and, referring to the king, he adds: "If one subsequently dispute a distribution which was made with his own consent, he shall be compelled by the king to abide by his share or be amerced if he persist in contention (Anubandham)." Anubandham] Obstinacy or pertinaciousness.

SUMMARY (BY THE TRANSLATOR).

I. A divided parcener possesses absolute power over his own share of the property. He is competent to alienate it at his pleasure without the concurrence of his co-heirs.

II. In instances, however, where co-heirs, without dividing the land belonging to them in common, have entered into an agreement as to the division of its produce only in times of harvest, none of them possesses an independent power to alienate such landed property by sale, gift, or otherwise.

III. A distribution once made with the consent of the parties is not to be subsequently disputed by any of them.

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(1). According to Mit., Dayabhaga, Dayatatva, Viramitrodaya, &c., the reading is Sapinda "kinsmen," instead of Dáyadah "heirs."

(2). It has, however, been held by the High Court that alienation of landed property in such a case is valid to the extent of the aliener's share. See Judgment in O. S. No. 179 of 1863, I M.H.C.R, page 471.

CHAPTER XVI.

ON THE EVIDENCE OF PARTITION.

Yájnavalkya specifies the evidence of partition where denied.

1. Yájñavalkya :—"When partition is denied, the fact of it may be ascertained by the evidence of kinsmen, relatives, and witnesses, and by written proof, or by separate possession [Yautakyh] of house or field." (1)

The passage applicable also to collateral questions arising out of the fact of a partition. Passage of Nareda on the subject.

2. Yautakyh] Possessing separately. The expression "When partition is denied," used in the text, includes also the collateral questions arising out of the fact of a partition. Hence, Nareda :—"If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of kinsmen and by the record (2) of the distribution, or by the separate transaction of affairs."

Exposition of the passage.

3. Where a question arises as to the truth of the partition itself, as by saying "No partition took place among us," or as to the truth of a collateral circumstance connected with the partition, as by saying "The partition was made but not of the *whole* property," the fact is to be determined by the evidence of kinsmen, *i. e.* co-heirs and the like, and by the written deed of partition, or by inferences to be drawn from separate transaction of affairs, &c.

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(1). Vide Judgment of the High Court in R. A. No. 44 of 1865, in which they have ruled that actual seisin of the divided property is not necessary to constitute division; and that an agreement to divide is, in itself, sufficient to hold the parties divided, whether the property was actually divided or not—III M.H.C.R. 40.

(2). There is another reading of this passage: Bhogalekhyena "by occupancy or by a writing," instead of Bhagalekhyena "by the record of the distribution"—Note to Jim. Vah. chap. xiv. para. 1, and Mit. chap. ii. sec. xii. para. 3—Note.

4. "Separate transaction of affairs," means the performance of the sacrifice called "Vyçvadeva," (1) the giving of alms, and the feeding of guests [Atithees], all separately.

Explanation of certain terms in the passage.

5. If it be asked how these circumstances furnish evidence in favour of partition, the same author states:—"The religious duties of unseparated brethren are single. When partition indeed has been made, religious duties become separate for each of them." (2)

How the separate transaction of affairs affords evidence of partition. Passage of Nareda.

6. Brahaspati, too, says on the subject:—"Among co-heirs living in commensality, *i. e.* with one dressing of food, the worship of manes, deities and Brahmins takes place in one house only—but in a family of divided brethren, the above acts are performed in each house separately." (3)

Passage of Brahaspati on the same subject.

7. As the separate performance of Vyçvadeva and other rites does not exist in an undivided family, such separate performance indicates division, and may therefore be taken as a sign of partition where a question shall arise regarding partition.

Exposition of the passage.

8. The same author alludes to certain other signs of previous partition, such as bearing testimony for each other, and the like, and states that these acts are permitted among divided parceners only and not among the undivided. "Separated and not unseparated brethren may reciprocally *bear testimony*, (4) become sureties, bestow gifts, and accept presents."

Other proofs of separation noticed by Brahaspati.

9. Thus, the truth of partition may be ascertained even from the reciprocal bearing of testimony and the like. Hence, the same author adds:—"Those by

Partition may be ascertained from such facts. Passage of Brahaspati.

(1). This is a religious sacrifice performed every day at meals.

(2). See chap. i. para. 42 of this treatise.

(3). See chap. i. para. 43 of this treatise.

(4). This must be, I think, in regard to property connected with the family.

whom such matters are publicly transacted with their co-heirs,(1) may be known to be separate even without written evidence."

By whom such matters are publicly transacted] By whom all or any such matters are publicly transacted.

Yájnavalkya'senumeration of circumstances indicating division.

10. The reciprocal lending of money is also a circumstance indicating division among co-parceners. It cannot exist in an undivided family. Accordingly, Yájñavalkya:—"It is declared that, in an undivided family, brethren, husband and wife, father and son, cannot become sureties for each other; nor reciprocally lend to, nor give evidence for, each other."

Passage of Brahaspati in support of that of Yájnavalkya.

11. Hence, a lender is necessarily concluded to be divided with the borrower. Accordingly, Brahaspati:—"They who have their income, expenditure and wealth distinct, and have mutual transactions of money-lending [Kuseetham] and traffic, are undoubtedly separate."

Kuseetham] Lending money for interest. Traffic] Trade. The term "mutual" is applicable both to money-lending and traffic.

Presumptive proof to be admitted when direct evidence is wanting.

12. The same author further declares that division must be inferred from these circumstances, only in default of proof directly establishing the fact. "A violent crime, right to immoveable property, and a previous partition among co-heirs, may be ascertained by presumptive proof, if there be no witnesses."(2)

A previous partition] A partition that took place before the time of dispute regarding it.

Presumptive proof] Proof arising from circumstances.

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(1). Copies of Jim. Vah. exhibit Svarithatah "with their own wealth," instead of Svariktheshu "with their co-heirs."

(2). There is another reading of this passage Nasyatam Patra Sakshinam "if there be neither writing nor witnesses" instead of Na Syur Yatra cha Sakshinah "if there be no witnesses." See note to Jim. Vah. chap. xiv. para. 11.

Certain kinds of presumptive proof enumerated by the same author.

13. The same author enumerates certain circumstances tending to raise the presumption of the commission of a violent crime, &c. "Family feud [Kulanubandham], rivalship [Vyaghatam], or discovery of a portion of the booty [Hodhum], may be evidence of a violent crime, possession of the land may be proof of property, and separate wealth is an argument of partition." (1)

Certain terms in the passage, explained.

Family feud] Grudge existing since the time of ancestors. Rivalship] Mutual malice.

Hodhum] Discovery of a portion of what has been forcibly carried away.

Possession of the land] Possession of the land by the party claiming it.

Text of Kátyáyana as to what is sufficient to presume partition.

14. Kátyáyana, on the subject:— "Partition of patrimony shall be presumed where brethren have lived ten years apart, separated in their religious rites and civil observances."

The term "brethren" is here used to denote co-parceners in general, and the term "patrimony" to denote heritage of any kind.

Exposition of the text.

15. The meaning of the above text is, that although a partition of heritage may *not* actually have taken place, yet, in the instances referred to, the parties will be presumed to be divided according to the passage:

Adverse possession for certain periods sufficient to extinguish title.

"He who sees his land possessed by a stranger for twenty years or his personal estate for ten years, without asserting his own right, loses his property in them."(2)

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(1). Several terms of this passage have been differently translated in Jim. Vah. chap. xiv. para. 8, see also note to the paragraph.

(2). This is the rule of limitation according to Hindu Law, as regards real and personal property. Pledges, however, are excepted from the operation of this rule; but the exception must be understood to relate to such as are in the hands of the pledgee. See I Digest, çloka 113, note, p. 131; see also note to chap. i, para. 23 of this treatise.

16. As for disputes arising *within* ten years after partition, they are to be determined not with reference to the rules contained in the above text (paragraph 14) of Kátyáyana, but with reference to the circumstances already noticed. Where, however, these circumstances, from being satisfactorily explained away, fail to prove the fact of division, there is a text which permits recourse being had to a divine test. The text is: "In the absence of all these, a divine test is prescribed."

The rules, however, are not applicable to disputes arising within ten years after partition.

A text permitting recourse to divine test in disputes of partition, noticed.

17. Such test, however, cannot be resorted to under the passage of Vrddha Yájñavalkya. "In doubts upon the subject of partition, the division must be proved by kinsmen, witnesses and written deeds: proof by ordeal is not to be."

Such test is not, however, to be resorted to under the passage of Vrddha Yájnavalkya.

18. If it be asked, how, if so, a division is to be ascertained, where it is incapable of being established by any of the circumstances aforementioned, Menu enjoins:—"When there is a doubt of partition among the co-heirs, a partition must be again made even though they have taken separate places of abode."

When division is unascertainable by any means, a division is again to be made, as ordained by Menu.

19. This is where the fact of partition is so much involved in doubt as to be incapable of being ascertained under any circumstances.

To what case the passage of Menu applicable.

20. Menu, however, states at the same time:—"Once is the partition of inheritance made. Once is a girl given in a marriage. Once is a promise of gift made. These three take place only once." But this text refers to a partition which is capable of being ascertained by circumstanees, &c. Hence there is no inconsistency.

A passage of Menu of a contrary import, quoted and explained.

SUMMARY (BY THE TRANSLATOR).

I. When a partition is denied, or when a question arises as to the truth of a collateral circumstance connected with

partition, it may be ascertained by the evidence of kinsmen, relatives and witnesses, by the written deed of partition, by separate possession of property, or by the separate performance of religious acts.

II. The occurrence of mutual loans or other contracts between the members of the family, the becoming sureties for one another, the giving evidence for or against each other, the reciprocal bestowal of gifts or acceptance of presents, are all circumstances indicating division.

III. Partition may be ascertained from circumstances, in default of direct proof.

IV. Parties will be presumed divided, where they have lived ten years apart, separated in their religious rites and civil observances.

V. He who sees his land possessed by a stranger for twenty years, or his personal estate for ten years without, asserting his own right, loses his property in them.

VI. Proof by ordeal is not to be resorted to, in questions of partition.

VII. Where the fact of a partition is so much involved in doubt as to be incapable of being ascertained by evidence, direct or circumstantial, it is to be again made, although the parties may have taken separate places of abode.

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